TEXAS REGISTER

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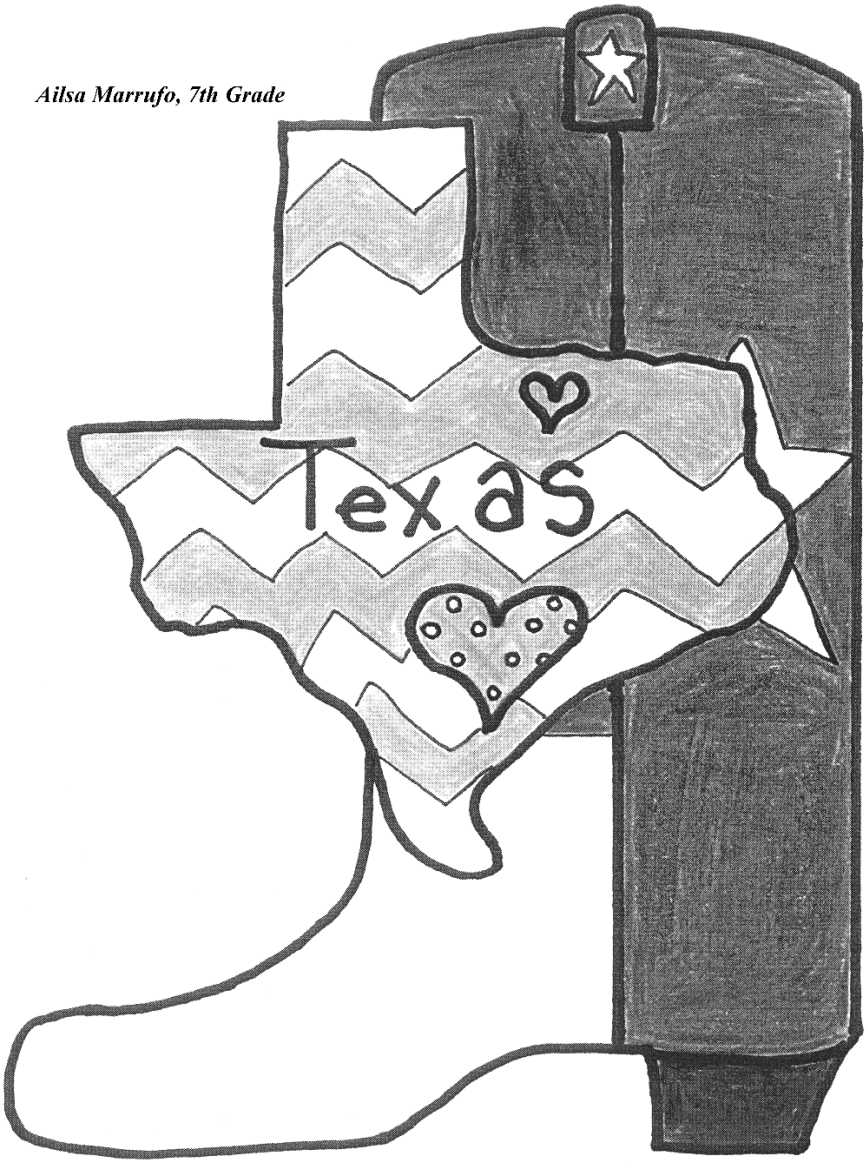
Ailsa Marrufo, 7th Grade



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PROPOSED RULES

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

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

TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 41. FEVER TICKS

4 TAC §41.1, §41.8

The Texas Animal Health Commission (commission) proposes amendments to §41.1, concerning Definition of Terms, and a new §41.8, concerning Dipping, Treatment, and Vaccination of Animals, in Chapter 41, which is entitled "Fever Ticks."

Elsewhere in this issue of the *Texas Register,* the commission contemporaneously proposes the repeal of the existing §41.8, concerning Dipping and Treatment of Livestock.

The purpose of the amendments to §41.1 is to add a fever tick vaccine definition. The purpose of a new §41.8 is to add fever tick vaccine requirements for beef cattle located in a control purpose quarantine area, temporary preventative quarantine area or tick eradication quarantine area, and other beef cattle or premises epidemiologically determined by the commission to be at an increased risk for fever ticks. A new §41.8 will also clarify and better organize the different requirements for dipping, treatment, and vaccination. The title of §41.8 is being changed to accurately capture that the requirements apply to animals, not just livestock, capable of hosting or transporting ticks capable of carrying Babesia, and to add vaccination to the title.

The purpose of the Texas Cattle Fever Tick Eradication Program is to eradicate fever ticks through the management of a permanent quarantine zone, as well as through temporary quarantine areas, created to address the presence of ticks outside the permanent zone.

The USDA Cattle Fever Tick Eradication Program, USDA Agriculture Research Service, and the commission have developed a vaccine for the purpose of acting as a preventative to be used against fever ticks. Collaboratively, they worked with a major pharmaceutical company for five years to get the vaccine through the approval process by USDA Center for Veterinary Biologics (CVB) approval process with the intent for the fever tick vaccine to be integrated into the eradication program.

The fever tick vaccine was developed and manufactured by a major pharmaceutical company with extensive experience in livestock products. It is a recombinant product which has no live, modified live, nor killed bacterial or viral components. It is derived from epithelial lining of the fever tick gut. Cattle vaccinated with this antigen produce an antibody response at high levels in blood. Fever ticks which feed on immunized cattle consume high levels of the antibody in blood meal. The antigen-antibody response occurs in the stomach of the tick and effectively destroys the gut lining of the tick, reducing the tick's capabilities to produce offspring and potentially killing the tick.

The fever tick vaccine requires two priming doses 28 days apart. The maximum protection requires boosters every 6 months. This is administered by intramuscular injection in the neck region of cattle. The vaccine is approved for use in beef cattle two months of age and older. There is insufficient safety data for use of the vaccine in dairy cattle and, as such, the vaccine is not authorized for use in dairy cattle at this time. The USDA CVB requires a slaughter withholding period of 60 days following administration of the vaccine and that is provided for in the proposal.

There are numerous benefits of the fever tick vaccination, with the most significant being the potential to eradicate ticks from infested premises. The vaccine provides long term protection against re-infestation; after the initial inoculations cattle only need, at most, two inoculations per year and premises are protected continuously because cattle are fever tick immune. In this regard, the vaccine substantially prevents re-establishment of ticks when new incursions occur from stray livestock and wildlife from Mexico in US premises stocked with immunized cattle. The vaccine is simple to administer and works synergistically with treatment to promote more efficient elimination of fever ticks on premises with less dependency on chemical and systemic acaracides.

It is also noted that although the vaccine is over 95% effective against Rhipicephalus (Boophilus) annulatus, it is only 70% effective against Rhipicephalus (Boophilus) microplus but, the booster effect over a 2-3 year period is believed to raise efficacy to near 90% for Rhipicephalus (Boophilus) microplus. The next generation vaccine, expected in two years, is predicted to have high efficacy for both strains of fever ticks with fewer annual boosters.

FISCAL NOTE

Ms. Larissa Schmidt, Director of Administration, Texas Animal Health Commission, has determined for the first five-year period the rules are in effect, there will be no significant additional fiscal implications for state or local government as a result of enforcing or administering the rules. An Economic Impact Statement (EIS) is required if the proposed rule has an adverse economic effect on small businesses. The agency has evaluated the requirements and determined that there is not an adverse economic impact and, therefore, there is no need to do an EIS. It is being applied to everyone restricted by a fever tick quarantine because the cattle have to be inspected for fever ticks, which provides an opportunity to have the cattle vaccinated at that time. Furthermore, having the cattle vaccinated will act as a preventative for fever ticks, which will help control and eventually eradicate fever ticks from infested premises.

PUBLIC BENEFIT NOTE

Ms. Schmidt has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to have a preventative measure in place to control and eradicate fever ticks from a herd or premises.

LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Texas Government Code §2001.022, this agency has determined that the proposed rules will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

TAKINGS ASSESSMENT

The agency has determined that the proposed governmental action will not affect private real property. The proposed amendments are an activity related to the handling of animals, including requirements for testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC §59.7, and are, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

REQUEST FOR COMMENT

Comments regarding the proposal may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719 or by email at comments@tahc.texas.gov.

STATUTORY AUTHORITY

The amendments are proposed under the following statutory authority as found in Chapters 161 and 167 of the Texas Agriculture Code. The commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock.

Pursuant to §161.005, entitled "Commission Written Instruments", the commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire commission.

Pursuant to §161.007, entitled "Exposure or Infection Considered Continuing", if a veterinarian employed by the commission determines that a communicable disease exists among livestock, domestic animals, or domestic fowl or on certain premises or that livestock, domestic animals, or domestic fowl have been exposed to the agency of transmission of a communicable disease, the exposure or infection is considered to continue until the commission determines that the exposure or infection has been eradicated through methods prescribed by rule of the commission.

Pursuant to §161.048, entitled "Inspection of Shipment of Animals or Animal Products", the commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease.

Pursuant to §161.054, entitled "Regulation of Movement of Animals", the commission, by rule, may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce.

Pursuant to §161.057, entitled "Classification of Areas", the commission by rule may prescribe criteria for classifying areas in the state for disease control. The criteria must be based on sound epidemiological principles. The commission may prescribe different control measures and procedures for areas with different classifications.

Pursuant to §161.061, entitled "Establishment", if the commission determines that a disease listed in §161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state or livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place.

Pursuant to §161.081, entitled "Importation of Animals", the commission by rule may regulate the movement, including movement by a railroad company or other common carrier, of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country.

Pursuant to §167.003, entitled "General Powers and Duties of the Commission", the commission shall eradicate all ticks capable of carrying Babesia in this state and shall protect all land, premises, and livestock in this state from those ticks and exposure to those ticks. In carrying out this chapter, the commission may adopt necessary rule.

Pursuant to §167.004, entitled "Classification of Animals or Premises as Infested, Exposed or Free from Exposure", the commission by rule shall define what animals and premises are to be classified as exposed to ticks. The commission shall classify as exposed to ticks livestock that have been on land or in an enclosure that the commission determines to be tick infested or exposed to ticks or to have been tick infested or exposed to ticks before or after the removal of the livestock, unless the commission determines that the infestation or exposure occurred after the livestock were removed and that the livestock did not become infested or exposed before removal.

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

§41.1. Definition of Terms.

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

(1) Adjacent premise--A premise that borders an exposed or infested premise, including premises separated by roads, double fences, or fordable streams. A premise that would normally be classified as adjacent may be exempted from adjacent premise requirements by a State or Federal epidemiologist if the premise is separated from the exposed or infested premise by double fencing, sufficient to prevent the spread of ticks, with one of the fences being game-proof.

(2) Animal--Any domestic, free-range, or wild animal capable of hosting or transporting ticks capable of carrying Babesia, including livestock; zebras, bison, and giraffes; and deer, elk, and other cervid species.

(3) Certificate--A document authorizing movement of livestock issued by an authorized representative of the commission after the livestock have been treated in a manner prescribed by the commission for the area and premise from which they originate.

(4) Check premise--A premise located in a tick eradication quarantine area, temporary preventative quarantine area, or control purpose quarantine area that is not classified as an infested, exposed, or adjacent premise.

(5) Control purpose quarantine area--A premise or property designated by the commission for a systematic inspection of livestock and premises and control of the movement of livestock in order to investigate and control a suspected exposure of animals to ticks outside the tick eradication quarantine area. The boundaries of the area will be determined by evaluation of the barriers to the potential spread of ticks.

(6) Designated Fever Tick Epidemiologist (DFTE)--A State or Federal epidemiologist designated to make decisions concerning the use and interpretation of exposure to fever ticks and to manage the Fever Tick program. The DFTE must be selected jointly by the Executive Director of the commission [~~Commission~~] and the USDA-APHIS, VS representative for Texas. The DFTE has the responsibility to determine the scope of epidemiologic investigations, determine the status of herds, assist in development of individual herd plans, and coordinate fever tick surveillance and eradication programs within his or her geographic area of responsibility. The DFTE has authority to make independent decisions concerning the management of herds and use of property and limiting the impact of wildlife when those decisions are supported by sound fever tick eradication principles.

(7) Dipping or treating--If the commission [~~Commission~~] requires livestock to be dipped, the livestock shall be submerged in a vat. A spray-dip machine may be used in areas where a vat is not reasonably available. Careful hand spraying may be used for easily restrained horses and show cattle, and when specifically authorized, certain zoo or domestic animals. Livestock unable to go through a dipping vat because of size or physical condition may be hand sprayed. The treatment must be paint marked so that it can be identified for at least 17 days. If the commission [~~Commission~~] determines that free-ranging wildlife and exotic animals, which are capable of hosting fever ticks, require treatment, they shall be treated by methods and for the duration of time approved by the commission [~~Commission~~].

(8) Exposed livestock--Any of the following factors shall constitute livestock as being exposed:

(A) Livestock that have entered an infested or exposed premise and have not been dipped and removed from the infested or exposed premise within 14 days after entry.

(B) Livestock that have occupied an exposed premise and have not completed treatment required for movement from an exposed premise.

(C) Livestock that have entered Texas from Mexico without a certificate from the United States Department of Agriculture.

(9) Exposed premise--A premise shall be considered exposed if systematic treatment has not been completed and if either of the following conditions apply:

(A) Ticks have been found on livestock that have been on the premise for less than 14 days.

(B) A premise that has received exposed livestock, or equipment or material capable of carrying ticks from an infested or exposed premise.

(10) Fever Tick Vaccine--A biological treatment administered by injection to an animal that stimulates a potent immune response against fever tick proteins, which prevents the infestation of ticks capable of carrying Babesia.

(11) [~~(10)~~] Free area--An area designated by the commission as being free of ticks or exposure to ticks. The extent of the area will be determined by the appropriate barriers to the potential spread of ticks.

(12) [~~(11)~~] Game proof fence--A fence that has a minimum height of eight feet, consisting of wire mesh of sufficiently small size to prevent or impede the movement of domestic or exotic wildlife over, under, or through the fenced area.

(13) [~~(12)~~] Individual herd plan--A written disease management plan that is developed by the herd or land owner(s) and/or their representative(s), and a State or Federal DFTE to eradicate fever ticks or potential exposure to fever ticks from an affected herd or property. The herd plan will include appropriate treatment frequencies, treatments to be employed, and any additional fever tick management or herd management practices, including vaccination, deemed necessary to eradicate fever ticks from the herd or on an infected or exposed premise in an efficient and effective manner. The plan must be approved by the Executive Director of the commission [~~Commission~~] and USDA-APHIS, VS representative for Texas, and have the concurrence of the DFTE.

(14) [~~(13)~~] Infested livestock--Livestock shall be considered infested if eradication treatment for movement from an infested premise has not been completed and if either of the following conditions apply:

(A) Ticks have been found on livestock.

(B) Livestock which occupy a premise where ticks have been found on livestock that have been on the premise more than 14 days.

(15) [~~(14)~~] Infested premise--A premise where ticks have been found on livestock that have been on the premise for more than 14 days, and systematic treatment has not been completed.

(16) [~~(15)~~] Livestock--Any domestic animal or any free ranging animals found on a premise or captured wild animal that is capable of hosting or transporting ticks capable of carrying babesia (the causative agent of cattle tick fever), including, but not limited to, cattle, horses, mules, jacks, jennets, zebras, buffalo, giraffe, and deer.

(17) [~~(16)~~] Permit--A document issued by an authorized representative of the commission allowing specified movement of livestock.

(18) [~~(17)~~] Premise--An area which can be defined by boundaries of recognizable physical barriers that prevent livestock from crossing the boundaries under ordinary circumstances; or an area that livestock do not ordinarily inhabit that the commission defines by recognizable features.

(19) [~~(18)~~] Premise inspection--A routine inspection by an authorized representative of the commission of premise boundaries and the livestock within for the purpose of documenting exposure of the premise.

(20) [~~(19)~~] Premise under vacation--A premise from which all livestock have been removed as prescribed by the commission.

(21) [~~(20)~~] Range inspection of livestock--An inspection of livestock to see the animal close enough to detect ticks on the animal.

(22) [~~(21)~~] Scratch inspection of livestock--An inspection of livestock by an authorized representative of the commission in an approved facility that allows the inspector to touch and see all parts of the livestock.

(23) [~~(22)~~] Temporary preventative quarantine area--An area designated by the commission for systematic inspection and treatment of livestock and premises, and control of movement of livestock, in order to detect and eradicate infestation and exposure from infested or exposed premises outside the tick eradication quarantine area. The extent of the area will be determined by evaluating the barriers to the potential spread of ticks. This is also designated as a "Blanket Disease Quarantine."

(24) [~~(23)~~] The commission--The Texas Animal Health Commission.

(25) [~~(24)~~] Tick--Any tick capable of transmitting bovine Babesiosis (cattle tick fever or bovine piroplasmosis).

(26) [~~(25)~~] Tick eradication quarantine area--An area designated by the commission for systematic inspection and treatment of livestock and premises, and control of movement of livestock, in order to detect and eradicate infestation from infested or exposed premises. The extent of the area will be determined by evaluating the barriers to the potential spread of ticks. This is the permanent quarantine area which is designated in §§41.14 - 41.22 of this chapter (relating to Quarantine Line; Defining and Establishing Tick Eradication Areas), and in the United States Department of Agriculture Code of Federal Regulations Part 72.5, parallel to the Rio Grande River, commonly known as the buffer zone or systematic area.

(27) [~~(26)~~] Treatment--A procedure or management practice used on an animal to prevent the infestation of, control or eradicate ticks capable of carrying Babesia.

§41.8. Dipping, Treatment, and Vaccination of Animals.

(a) General Requirements:

(1) All scratch inspections, dipping, treatment, and vaccination prescribed in this section must be done under the supervision of a representative authorized by the commission.

(2) All scratch inspections, dipping, treatment, or vaccination must be done under instructions issued by the commission. All requirements will be in written form directed to the owner or caretaker. An inspector for the commission will deliver the instructions in person along with a copy of these regulations. All premise boundaries will be listed in the instructions.

(3) The owner or caretaker of livestock on infested and exposed premises must comply with the TAHC approved Quarantine Schedule as follows:

(A) The starting date for infested premises for Table I (Pasture Treatment or Vacation Schedule, South of Highway 90) and Table II (Pasture Treatment or Vacation Schedule, North of Highway 90), is the date of the first clean dipping of 100% of the livestock.

(B) The starting date for exposed premises for Table I and Table II is when 100% of the livestock on the premise have been dipped.

(C) Copies of Table I (Pasture Treatment or Vacation Schedule, South of Highway 90) and Table II (Pasture Treatment or Vacation Schedule, North of Highway 90) may be obtained from the Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711-2966.

Figure: 4 TAC §41.8(a)(3)(C)

(4) The owner or caretaker must gather and present all livestock for scratch inspection, dipping, treatment, or vaccination required by the commission. The owner or caretaker is responsible for all costs associated with and labor necessary for presenting the owner or caretaker's cattle for scratch inspection, dipping, treatment, or vaccination at the location prescribed by the commission.

(b) Requirements for Dipping, Treatment, or Vaccination:

(1) Dipping Requirements:

(A) The owner or caretaker of livestock on infested or exposed premises must present the livestock to be scratch inspected and dipped with subsequent dipping every seven to 14 days until the livestock are moved from the premise in accordance with these regulations, except as provided in subsection (a)(3) of this section.

(B) The 14-day interval may be extended due to circumstances beyond the control of the owner upon approval by an authorized representative of the commission. In no event will the extension be more than three days. If the extension is granted, no certificate for movement will be issued after the 14th day, and the next dip must be on the original 14-day schedule.

(C) The scratch inspection and first dip must be within 14 days from the date infestation or exposure is discovered unless otherwise approved by the commission.

(D) A dip is not official unless 100% of the livestock within the premise affected are dipped on schedule.

(E) The commission will authorize for use in dipping only those dips that have been approved by the Animal and Plant Health Inspection Service of the United States Department of Agriculture and the Texas Animal Health Commission for use in official dipping to rid animals of the tick.

(F) The concentration of the dipping chemical used must be maintained in the percentage specified for official use by means of the approved vat management techniques established for the use of the agent; or, if applicable, by an officially approved vat side test or field test of the commission.

(G) If the commission requires livestock to be dipped, the livestock shall be submerged in a vat. A spray-dip machine may be used in areas where a vat is not reasonably available.

(H) Careful hand spraying may be used for easily restrained horses and show cattle, and when specifically authorized by a commission representative, certain zoo or domestic animals.

(I) Livestock unable to go through a dipping vat because of size or physical condition, as determined by a commission representative, may be hand sprayed.

(J) The dip treatment must be paint marked on the animals so that it can be identified for as treated for at least 17 days after the treatment.

(2) Authorized Treatment Requirements:

(A) Following the first clean dipping of 100% of the livestock, the cattle may be treated with injectable doramectin in lieu of systematic dipping. The owner or caretaker of cattle on an infested or exposed premise must present the livestock to be scratch inspected and treated with injectable doramectin every 25-28 days until the livestock are moved from the premises in accordance with these regulations, except as provided in subsection (a)(3) of this section.

(B) Treatment of doramectin shall by administered by subcutaneous injection by a representative of the commission.

(C) The owner or caretaker must comply with the slaughter withholding period (35 days) of doramectin by holding cattle at the premise of origin until the withdrawal period has been completed.

(D) A treatment is not official unless 100% of the livestock within the premise affected are treated on schedule.

(E) Free-ranging wildlife or exotic livestock that are found on infested or exposed premises, and which are capable of hosting fever ticks will be treated by methods approved by the commission and for the length of time specified by the commission.

(i) Ivermectin medicated corn may be administered to free-ranging wildlife or exotic livestock by a representative of the commission following the close of the hunting season, provided that treatment is terminated at least 60 days prior to the beginning of the next hunting season to comply with the required withdrawal period.

(ii) Permethrin impregnated roller devices may be used for topical treatment of free-ranging wildlife or exotic livestock during periods when ivermectin medicated corn is not administered. The commission may specify the use of other pesticides for treatment of wildlife or exotic livestock when deemed necessary to control and eradicate fever ticks.

(3) Vaccination Requirements:

(A) The fever tick vaccine shall be administered by employees or authorized agents of the USDA/APHIS/Veterinary Services or the commission.

(B) The owner or caretaker must comply with the 60 day slaughter withholding period, or other slaughter withholding timeframe as specified by the label. The owner or caretaker must hold vaccinated cattle at the premise of origin until the withdrawal period is has been completed.

(C) In addition to any dipping or treatment required by this section, beef cattle two months of age or older located within the tick eradication quarantine area shall be vaccinated with the fever tick vaccine at intervals prescribed by the commission. The vaccine must be administered when cattle are gathered and presented for annual inspection as required by §41.9 of this chapter (relating to Vacation and Inspection of a Premise) and at other times specified by the commission.

(D) In addition to any dipping or treatment required by this section, the commission may require fever tick vaccination of beef cattle two months of age and older located within the temporary preventative quarantine area, control purpose quarantine area or other beef cattle or premises epidemiologically determined by the commission to be at an increased risk for fever ticks. The cattle shall be vaccinated at intervals prescribed by the commission.

(c) Herd Plan and Protest. Each premise within a tick eradication quarantine area, temporary preventative quarantine area, or control purpose quarantine area will be classified by the commission as an infested, exposed, adjacent, or check premise and is required to execute a herd management plan and remain under restrictions until no evidence of fever ticks is disclosed or a complete epidemiologic investigation fails to disclose evidence of exposure to fever ticks, with the concurrence of the DFTE. A person may protest an initial test or a herd plan for each premise classified as increased risk for fever ticks.

(1) To protest, the responsible person must request a meeting, in writing, with the Executive Director of the commission within 15 days of receipt of the herd plan or notice of an initial test and set forth a short, plain statement of the issues that shall be the subject of the protest, after which:

(A) the meeting will be set by the Executive Director no later than 21 days from receipt of the request for a meeting;

(B) the meeting or meetings shall be held in Austin; and

(C) the Executive Director shall render his decision in writing within 14 days from date of the meeting.

(2) Upon receipt of a decision or order by the executive director which the herd owner wishes to appeal, the herd owner may file an appeal within 15 days in writing with the Chairman of the commission and set forth a short, plain statement of the issues that shall be the subject of the appeal.

(3) The subsequent hearing will be conducted pursuant to the provisions of the Administrative Procedure and Texas Register Act, and Chapter 32 of this title (relating to Hearing and Appeal Procedures).

(4) If the Executive Director determines, based on epidemiological principles, that immediate action is necessary, the Executive Director may shorten the time limits to not less than five days. The herd owner must be provided with written notice of any time limits so shortened.

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

Filed with the Office of the Secretary of State on February 24, 2016.

TRD-201600898
Gene Snelson
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: April 10, 2016
For further information, please call: (512) 719-0722

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4 TAC §41.8

The Texas Animal Health Commission (commission) proposes the repeal of §41.8, concerning Dipping and Treatment of Livestock, in Chapter 41, which is entitled "Fever Ticks".

Elsewhere in this issue of the *Texas Register,* the commission proposes new §41.8, concerning Dipping, Treatment, and Vaccination of Animals, which replaces the repealed section in its entirety.

FISCAL NOTE

Ms. Larissa Schmidt, Director of Administration, Texas Animal Health Commission, has determined there will be no significant additional fiscal implications for state or local government as a result of repealing the rule.

PUBLIC BENEFIT NOTE

Ms. Schmidt has also determined that the public benefit anticipated as a result of repealing the rule will be that the proposed new section will clarify and better organize the fever tick dipping, treatment, and new vaccination requirements.

LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with the Texas Government Code §2001.022, this agency has determined that the proposed repeal will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

TAKINGS ASSESSMENT

The agency has determined that the proposed repeal will not affect private real property and is, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

REQUEST FOR COMMENT

Comments regarding the proposal may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719 or by email at comments@tahc.texas.gov.

STATUTORY AUTHORITY

The repeal is authorized by the Texas Agriculture Code §161.046, which provides the commission with authority to adopt rules relating to the protection of livestock, exotic livestock, domestic fowl or exotic fowl, as well as Texas Government Code §2001.039, which authorizes a state agency to repeal a rule.

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

§41.8. Dipping and Treatment of Livestock.

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

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Gene Snelson
General Counsel
Texas Animal Health Commission
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For further information, please call: (512) 719-0722

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TITLE 19. EDUCATION

PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 230. PROFESSIONAL EDUCATOR PREPARATION AND CERTIFICATION

SUBCHAPTER C. ASSESSMENT OF EDUCATORS

19 TAC §230.21, §230.25

The State Board for Educator Certification (SBEC) proposes amendments to 19 TAC §230.21 and §230.25, concerning professional educator preparation and certification. The sections establish guidelines and procedures for the assessment of educators. The proposed amendments to 19 TAC §230.21 and §230.25 would implement the requirement from the 84th Texas Legislature, Regular Session, 2015, to enforce a limit of five attempts on any certification examination, unless the SBEC approves an additional attempt based on an individual's demonstration of good cause. The proposed amendments to 19 TAC §230.21 and §230.25 would also implement a clarification from the 84th Texas Legislature, Regular Session, 2015, that the commissioner of education approves the satisfactory level of performance required for certification examinations and would reflect input received from the SBEC, stakeholders, and Texas Education Agency (TEA) staff.

§230.21. Educator Assessment

Subsection (a) would be removed because the basic skills assessment that is required for admission to an educator preparation program (EPP) is described in 19 TAC Chapter 227. Subsections (b)-(e) would be relettered accordingly.

In accordance with the Texas Education Code (TEC), §21.048, as amended by House Bill (HB) 2205, 84th Texas Legislature, Regular Session, 2015, language would be amended in proposed subsection (a) to limit the number of times an individual may retake a certification examination to four unless the limitation is waived for good cause. A candidate seeking a waiver of the limitation would be responsible for providing proof of the good cause.

Proposed subsection (a)(1) would be added to define an examination retake. An examination retake would be defined as a second or subsequent attempt to pass any examination required for the issuance of a certificate, including an individual core subject examination that is part of the overall examination required for the issuance of a Core Subjects certificate. An examination score that is cancelled would not be considered an examination retake.

Proposed subsection (a)(2) would be added to define good cause in one of six ways. The first four ways would be based on the candidate's highest score on an examination and a conditional standard error of measurement (CSEM) table that would be published annually on the TEA website. A CSEM is the measure of the precision of scores for an assessment based on a specific score point and the design of the assessment. CSEM would be used in this context to determine how likely a candidate will pass an examination on his or her next attempt if a candidate completed a number of clock-hours of additional educational activity. If a candidate's highest examination score was within one, two, or three CSEMs from passing, the candidate would need to participate in 50, 100, or 150 clock-hours of additional educational activity, respectively. If a candidate's highest examination score was not within three CSEMs from passing, the candidate would need to participate in 200 clock-hours of additional educational activity.

If a candidate needs a waiver for more than one of the individual core subject examinations that are part of the overall examination required for the issuance of a Core Subjects certificate, the fifth way of determining good cause would be the combination of the number of clock-hours of educational activities required for each individual core subject examination as described in the first four ways of determining good cause. The maximum number of required clock-hours could not exceed 300 clock-hours. The number of clock-hours for each examination may be divided equally based on the number of examinations in the waiver request, but the number of clock-hours for an examination shall not be less than 50 for each examination.

The sixth way of determining good cause would be if a CSEM is not appropriate for an examination. One reason a CSEM may not be appropriate for an examination is if an examination does not use a scale score. The examinations that are currently used for certification and do not use a scale score are the Texas Assessment of Sign Communication examinations and the language examinations administered by the American Council for the Teaching of Foreign Languages. A second reason a CSEM may not be appropriate for an examination is if an examination

does not have enough test takers to determine a CSEM. The examinations that are currently used for certification and have very low numbers of test takers are the Languages other than English Latin examination and the examinations administered by the American Association of Family and Consumer Sciences. In the event that a candidate was not successful after five attempts on an examination that did not have a CSEM, the candidate would request a waiver, and TEA staff would identify individuals who are familiar and knowledgeable with the examination content. These individuals would review the candidate's performance on the five most recent examinations, identify the areas of deficit, and determine the number of clock-hours of additional educational activity required to demonstrate good cause.

Proposed subsection (a)(3) would be added to define educational activity. An educational activity would be provided by an approved EPP or an approved continuing professional education (CPE) provider or sponsor. Approved CPEs currently include all accredited institutions of higher education, education service centers, Texas public school districts, accredited private schools, and non-profit organizations that have offered professional development in Texas for at least five years. Approved CPEs also currently include private entities and individuals who have been approved by TEA staff to offer CPE activities. An educational activity would need to be directly related to the knowledge and skill competencies in which the candidate answered less than 70 percent of questions correctly on the past five examinations. A competency is a grouping of knowledge and skills on a certification examination that defines what an entry-level educator in Texas public schools should know and be able to do. To provide consistency among candidates when identifying deficit competencies, a candidate would add the number of questions answered correctly in each competency on each of the five most recent examinations, add the number of questions asked for each competency on each of the five most recent examinations, and then, for each competency, divide the total number of questions answered correctly by the total number of questions asked. If a candidate did not correctly answer 70 percent of the questions in a competency across the past five examinations, the candidate would identify the competency as a deficit area that should be addressed by an educational activity.

Proposed subsection (a)(4) would be added to identify how a candidate must document an educational activity. This documentation would include the provider, sponsor, or program's name, address, telephone number, and email address; the name of the educational activity; the competency or competencies addressed by the educational activity; the provider, sponsor, or program's description of the educational activity; and the provider, sponsor, or program's written verification of the dates of participation in and the number of clock-hours completed for the educational activity.

One semester credit hour earned at an accredited institution of higher education would be equivalent to 15 clock-hours. Clock-hours completed before the most recent examination attempt or after a request for a waiver is submitted would not count toward meeting the educational activity required to show good cause for a waiver.

Proposed subsection (a)(5) would be added to identify how a candidate would request a waiver. A candidate seeking certification based on the completion of an EPP would need the approval of an EPP to request a waiver. Candidates seeking certification through routes other than an EPP would need to meet the eligibility requirements of the appropriate route. Beginning September 1, 2016, a candidate would need to pay a waiver request fee of $160, which is the same amount for an out-of-state/out-of-country review of credentials. A candidate would need to request a waiver on a form developed by TEA staff and approved by the SBEC. Waiver requests would not be accepted for 45 calendar days after the fourth unsuccessful retake, 90 calendar days after a denied waiver request, or 180 calendar days after the most recent unsuccessful attempt that was the result of an approved waiver request. After a waiver request is received by TEA staff, the request would be reviewed and TEA staff would make a decision to approve or deny the request based on the criteria in proposed §230.21(a)(2)-(5). An applicant who does not meet the criteria in proposed §230.21(a)(2)-(5) may appeal to the SBEC for a final determination of good cause. A determination by the SBEC is final and may not be appealed.

In accordance with the TEC, §21.048, as amended by HB 2205, 84th Texas Legislature, Regular Session, 2015, language would be amended in proposed subsection (d) to clarify that the commissioner of education approves the satisfactory level of performance required for each certification examination. The proposed amendment would not change the authority of the SBEC to approve a schedule of examination fees and a plan for administering the examinations. Proposed subsection (e) would be added to list the appropriate examinations required for certification in a figure.

Minor technical edits would be proposed in subsections (f) and (g) to conform to *Texas Register* style and format requirements and update cross references.

§230.25. Test Exemptions for Persons with a Hearing Impairment

Minor technical edits would be proposed in subsection (b)(2) to align terminology with current SBEC rules.

The proposed amendments would have no reporting requirements; however, there would be procedural implications. Proposed 19 TAC §230.21(a)(5)(C) would require a person to request a waiver of a limitation of certification testing in writing on forms developed by the TEA staff. Proposed 19 TAC §230.21(a)(4) would require a person requesting a waiver to provide documentation of educational activity that is evidence of a substantial change in learning. This documentation would be included as part of the waiver request form. Other data that would be collected in the form includes an individual's TEA ID number and recent certification examination score information. The proposed amendments would have no locally maintained paperwork requirements.

FISCAL NOTE. Ryan Franklin, associate commissioner for educator leadership and quality, has determined that for the first five-year period the proposed amendments are in effect there are fiscal implications as a result of the proposed amendment to 19 TAC §230.21. The following fiscal implications are based on offsetting costs and revenues for state government (TEA) and costs for persons (individuals) for fiscal years (FYs) 2017-2020. The proposed new fee for a waiver request in 19 TAC §230.21 would cover the cost of administrating the waiver requests so there is neither a projected increase nor a projected loss in revenue for the TEA. The fee collection estimates are based on the number of people who attempted a test for the fifth time over the past four years. While the numbers of people attempting a fifth test have increased over the past four years, the TEA expects fewer people to reach a fifth attempt after the proposed amendments are in effect due to the various requirements for the waiver

application as well as other proposed rules that are related to the use of certification examination results for EPP accountability.

The proposed amendment to 19 TAC §230.21 includes a new waiver request fee of $160. This fee would be paid by an individual who requests a waiver to the four-retest limitation. This fee would adequately cover the TEA cost of administering the waiver request. For FY 2016 there would be no anticipated fiscal implications since the proposed amendment to §230.21 that would establish a $160 waiver application fee would not be implemented until the next fiscal year. The TEA estimates the total costs to state government at $62,592 for FY 2017, $49,800 for FY 2018, $35,168 for FY 2019, and $21,912 for FY 2020. The TEA estimates the total costs to individuals at $62,592 for FY 2017, $49,800 for FY 2018, $35,168 for FY 2019, and $21,912 for FY 2020. The costs for state government would be offset by the estimated revenues from the fees collected from individuals.

The TEA staff has determined that there is no additional fiscal impact on local governments as a result of enforcing or administering the proposed amendments.

PUBLIC BENEFIT/COST NOTE. Mr. Franklin has determined that for the first five-year period the proposed amendments are in effect the public and student benefit anticipated as a result of the proposed amendments would be the continuation of requirements relating to certification, fees, procedures for testing and certificate issuance, educational aides, and permits for professional educator preparation and certification. The anticipated economic cost to persons who are required to comply with the proposed amendments is described earlier under Fiscal Note.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND MICROBUSINESSES. There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins March 11, 2016, and ends April 11, 2016. The SBEC will take registered oral and written comments on the proposed amendments of 19 TAC §230.21 and §230.25 at the April 15, 2016 meeting in accordance with the SBEC board operating policies and procedures. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *sbecrules@tea.texas.gov* or faxed to (512) 463-5337. All requests for a public hearing on the proposed amendments submitted under the Administrative Procedure Act must be received by the Department of Educator Leadership and Quality, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Mr. Ryan Franklin, associate commissioner for educator leadership and quality, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on March 11, 2016.

STATUTORY AUTHORITY. The amendments are proposed under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.031(b), which states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; §21.041(a), which allows the SBEC to adopt rules as necessary for its own procedures; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(7), which requires the SBEC to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by the Texas Government Code, Chapter 2001; §21.041(b)(8), which requires the SBEC to propose rules that provide for the enforcement of an educator's code of ethics; §21.041(c), which requires the SBEC to propose a rule adopting a fee for the issuance and maintenance of an educator certificate that is adequate to cover the cost of administration of the TEC, Chapter 21, Subchapter B; §21.045(a)(1), as amended by House Bill (HB) 2205, 84th Texas Legislature, Regular Session, 2015, which authorizes the SBEC to propose rules necessary to establish standards to govern the continuing accountability of all educator preparation programs based on the following information that is disaggregated with respect to race, sex, and ethnicity: results of the certification examinations prescribed under the TEC, §21.048(a); §21.048(a), as amended by HB 2205, 84th Texas Legislature, Regular Session, 2015, which requires the SBEC to propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC, specifies that the commissioner of education shall determine the satisfactory level of performance required for each certification examination, and that the commissioner shall require a satisfactory level of examination performance in each core subject covered by the generalist certification examination; §21.048(a-1), as amended by HB 2205, 84th Texas Legislature, Regular Session, 2015, which states that the SBEC may not require that more than 45 days elapse before a person may retake an examination and a person may not retake an examination more than four times, unless the SBEC waives the limitation for good cause as prescribed by the SBEC; §21.048(a-2), as added by HB 2205, 84th Texas Legislature, Regular Session, 2015, which states that for purposes of the limitation imposed by Subsection (a-1) on the number of administrations of an examination, a person who initially took an examination before September 1, 2015, may retake the examination up to four times after that date, regardless of the number of times that the person attempted to perform satisfactorily on the examination before that date. This subsection expires September 1, 2018; §21.048(b), which states that the SBEC may not administer a written examination to determine the competence or level of performance of an educator who has a hearing impairment unless the examination has been field tested to determine its appropriateness, reliability, and validity as applied to, and minimum acceptable performance scores for, persons with hearing impairments; §21.048(c), which states that an educator who has a hearing impairment is exempt from taking a written examination for a period ending on the first anniversary of the date on which the SBEC determines, on the basis of appropriate field tests, that the examination complies with the standards specified in subsection (b) of this section; §21.048(c-1), as amended by HB 2205, 84th Texas Legislature, Regular Session, 2015, which states that the results of an examination administered under this section are confidential and are not subject to disclosure under the Texas Government Code, Chapter 552, unless the disclosure is regarding notification to a parent of the assignment of an un-

certified teacher to a classroom as required by the TEC, §21.057; and §21.048(d), which states the definitions for hearing impairment, reliability, and validity when used in the TEC, §21.048; and the Texas Occupations Code (TOC), §54.003(a), which defines "dyslexia" as having the same meaning assigned by the TEC, §51.970; §54.003(b), which states that, for each licensing examination administered by a state agency, the agency shall provide reasonable examination accommodations to an examinee diagnosed as having dyslexia; and §54.003(c), which states that each state agency shall adopt rules necessary to implement the TOC, §54.003, including rules to establish the eligibility criteria an examinee must meet for accommodation under the TOC, §54.003.

CROSS REFERENCE TO STATUTE. The proposed amendments implement the TEC, §§21.031; 21.041(a), (b)(1), (4), (7), and (8), and (c); 21.045(a)(1), as amended by HB 2205, 84th Texas Legislature, Regular Session, 2015; 21.048, as amended by HB 2205, 84th Texas Legislature, Regular Session, 2015; and the TOC, §54.003.

§230.21. Educator Assessment.

[~~(a) An individual seeking admission to an approved educator preparation program (EPP) for initial certification must be assessed for basic skills in reading, written communication, and mathematics, unless the individual holds a bachelor's degree or higher from an accredited institution of higher education.~~]

(a) [~~(b)~~] A candidate seeking certification as an educator must pass the examination(s) required by the Texas Education Code (TEC), §21.048, and the State Board for Educator Certification (SBEC) in §233.1(e) of this title (relating to General Authority) and shall not retake an examination more than four times, unless the limitation is waived for good cause. The burden of proof shall be upon the candidate to demonstrate good cause.

(1) For the purposes of the retake limitation described by the TEC, §21.048, an examination retake is defined as a second or subsequent attempt to pass any examination required for the issuance of a certificate, including an individual core subject examination that is part of the overall examination required for the issuance of a Core Subjects certificate as described in §233.2 of this title (relating to Core Subjects; Generalist). An examination score that is cancelled is not considered an examination retake.

(2) Good cause is:

(A) the candidate's highest score on an examination is within one conditional standard error of measurement (CSEM) of passing and the candidate has completed 50 clock-hours of educational activities. CSEMs will be published annually on the Texas Education Agency (TEA) website;

(B) the candidate's highest score on an examination is within two CSEMs of passing and the candidate has completed 100 clock-hours of educational activities;

(C) the candidate's highest score on an examination is within three CSEMs of passing and the candidate has completed 150 clock-hours of educational activities;

(D) the candidate's highest score on an examination is not within three CSEMs of passing and the candidate has completed 200 clock-hours of educational activities;

(E) if the candidate needs a waiver for more than one of the individual core subject examinations that are part of the overall examination required for the issuance of a Core Subjects certificate, the candidate has completed the number of clock-hours of educational activities required for each individual core subject examination as described in subparagraphs (A)-(D) of this paragraph up to a maximum of 300 clock-hours. The number of clock-hours for each examination may be divided equally based on the number of examinations in the waiver request, but the number of clock-hours for an examination shall not be less than 50; or

(F) if a CSEM is not appropriate for an examination, the TEA staff will identify individuals who are familiar and knowledgeable with the examination content to review the candidate's performance on the five most recent examinations, identify the deficit competency or competencies, and determine the number of clock-hours of educational activities required.

(3) Educational activities are defined as:

(A) institutes, workshops, seminars, conferences, interactive distance learning, video conferencing, online activities, undergraduate courses, graduate courses, training programs, in-service, or staff development given by an approved continuing professional education provider or sponsor, pursuant to §232.17 of this title (relating to Pre-Approved Professional Education Provider or Sponsor) and §232.19 of this title (relating to Approval of Private Companies, Private Entities, and Individuals), or an approved educator preparation program (EPP), pursuant to §228.10 of this title (relating to Approval Process); and

(B) being directly related to the knowledge and skills included in the certification examination competency or competencies in which the candidate answered less than 70 percent of competency questions correctly. The formula for identifying a deficit competency is the combined total of correct answers for each competency on the five most recent examinations divided by the combined total of questions for each competency on the five most recent examinations.

(4) Documentation of educational activities that a candidate must submit includes:

(A) the provider, sponsor, or program's name, address, telephone number, and email address. The TEA staff may contact the provider, sponsor, or program to verify an educational activity;

(B) the name of the educational activity (e.g., course title, course number);

(C) the competency or competencies addressed by the educational activity as determined by the formula described in paragraph (3)(B) of this subsection;

(D) the provider, sponsor, or program's description of the educational activity (e.g., syllabus, course outline, program of study); and

(E) the provider, sponsor, or program's written verification of the candidate's completion of the educational activity (e.g., transcript, certificate of completion). The written verification must include:

(i) the provider, sponsor, or program's name;

(ii) the candidate's name;

(iii) the name of the educational activity;

(iv) the date(s) of the educational activity; and

(v) the number of clock-hours completed for the educational activity. Clock-hours completed before the most recent examination attempt or after a request for a waiver is submitted shall not be included. One semester credit hour earned at an accredited institution of higher education is equivalent to 15 clock-hours.

(5) To request a waiver of the limitation, a candidate must meet the following conditions:

(A) the candidate is otherwise eligible to take an examination. A candidate seeking a certificate based on completion of an EPP must have the approval of an EPP to request a waiver;

(B) the candidate pays the non-refundable waiver request fee of $160;

(C) the candidate requests the waiver of the limitation in writing on forms developed by the TEA staff; and

(D) the request for the waiver is postmarked not earlier than:

(i) 45 calendar days after an unsuccessful attempt at the fourth retake of an examination as defined in the TEC, §21.048; or

(ii) 90 calendar days after the date of the most recent denied waiver of the limitation request; or

(iii) 180 calendar days after the date of the most recent unsuccessful examination attempt that was the result of the most recently approved request for waiver of the limitation.

(6) The TEA staff shall administratively approve each application that meets the criteria specified in paragraphs (2)-(5) of this subsection.

(7) An applicant who does not meet the criteria in paragraphs (2)-(5) of this subsection may appeal to the SBEC for a final determination of good cause. A determination by the SBEC is final and may not be appealed.

(b) [~~(c)~~] A candidate seeking a standard certificate as an educator based on completion of an approved EPP may take the appropriate certification examination(s) required by subsection (a) [~~(b)~~] of this section only at such time as the EPP determines the candidate's readiness to take the examinations, or upon successful completion of the EPP, whichever comes first.

(c) [~~(d)~~] The holder of a lifetime Texas certificate effective before February 1, 1986, must pass examinations prescribed by the SBEC to be eligible for continued certification, unless the individual has passed the Texas Examination of Current Administrators and Teachers (TECAT).

(d) [~~(e)~~] The commissioner of education [~~For an examination or other assessment required by law or under the provisions of this title, the SBEC~~] approves the satisfactory level of performance required for certification examinations, and the SBEC approves[~~,~~] a schedule of examination fees[~~,~~] and a plan for administering the examinations [~~examination~~].

(e) The appropriate examination(s) required for certification are specified in the figure provided in this subsection.
Figure: 19 TAC §230.21(e)

(f) Scores from examinations required under this title must be made available to the examinee, the TEA [~~Texas Education Agency (TEA)~~] staff, and, if appropriate, the EPP from which the examinee will seek a recommendation for certification.

(g) The following provisions concern test security and confidential integrity.

(1) An educator who participates in the development, design, construction, review, field testing, or validation of an examination shall not reveal or cause to be revealed the contents of the examination to any other person.

(2) An educator who administers an examination shall not:

(A) allow or cause an unauthorized person to view any part of the examination;

(B) copy, reproduce, or cause to be copied or reproduced any part of the examination;

(C) reveal or cause to be revealed the contents of the examination;

(D) correct, alter, or cause to be corrected or altered any response to a test item contained in the examination;

(E) provide assistance with any response to a test item contained in the examination or cause assistance to be provided; or

(F) deviate from the rules governing administration of the examination.

(3) An educator who violates subsection (a) [~~(b)~~] or (b) [~~(c)~~] of this section is subject to sanction in accordance with the provisions of the TEC, §21.041(b)(7), and Chapter 249 of this title (relating to Disciplinary Proceedings, Sanctions, and Contested Cases).

(4) An educator who is an examinee shall not:

(A) copy, reproduce, or cause to be copied or reproduced any test item contained in the examination;

(B) provide assistance with any response to a test item contained in the examination, or cause assistance to be provided;

(C) solicit or accept assistance with any response to a test item contained in the examination;

(D) deviate from the rules governing administration of the examination; or

(E) otherwise engage in conduct that amounts to cheating, deception, or fraud.

(5) An educator who violates this subsection is subject to:

(A) sanction in accordance with the provisions of the TEC, §21.041(b)(7), and Chapter 249 of this title;

(B) voiding of a score from an examination in which a violation specified in this subsection occurred; and

(C) disallowance and exclusion from future examinations either in perpetuity or for a period of time that serves the best interests of the education profession.

§230.25. Test Exemptions for Persons with a Hearing Impairment.

(a) A candidate who has a hearing impairment may request exemption from educator certification and competence examinations that have not been field-tested for appropriateness, reliability, and validity as applied to persons with hearing impairments.

(b) A request for such an exemption shall include:

(1) a report by a licensed audiologist documenting that the candidate has a hearing impairment so severe that the person cannot process written linguistic information. The report may not be dated more than one year from the date of the request for the exemption and should address the relationship between the candidate's age at the onset or diagnosis of hearing loss and the candidate's ability to process written linguistic information; and

(2) a recommendation for exemption and certification of the candidate by an approved Texas educator preparation program (EPP). The recommendation shall be based on the EPP's determination of the candidate's qualification for the exemption and competency in each certification class and category [~~content field~~] in which certifica-

tion is sought. The EPP shall make and document its determination of educator standards [~~content field~~] competency, as follows:

(A) by reviewing and approving transcripts from an accredited institution of higher education that demonstrate that the candidate has completed 24 semester credit hours in the educator standards [~~content field~~], including 12 semester credit hours of upper division coursework, and documenting that the coursework is aligned to the Texas educator [~~content field~~] standards;

(B) if an EPP uses an alternative assessment to measure competency in any certification class and category [~~content field~~] in which a certification is being sought, by documenting the method and validity of the means of assessment, the results of the assessment, and the alignment of the assessment to the applicable Texas educator [~~content field~~] standards; and

(C) for the Texas pedagogy and professional responsibilities examination, by documenting successful completion of EPP coursework and training covering educator standards for the grade level for which certification is sought.

(c) The TEC, §21.048, provides that the SBEC may not administer a certification examination that has not been field-tested for appropriateness, reliability, and validity to a person who is unable to process linguistic information. An educator who has been granted such an exemption may not subsequently take any other such certification examination without submitting a new audiologist's report that addresses the prior audiologist's report and documents that the educator is now able to process written linguistic information.

(d) This section does not affect the procedures for one-year certificates, extensions, and permits based on out-of-state credentials pursuant to §230.113 of this title (relating to Requirements for Texas Certificates Based on Certification from Other States or Territories of the United States), but, to be issued a standard certificate, a person must either satisfy the applicable examination requirements or be recommended for certification by an EPP.

(e) As with other EPP completion and admission documentation under §228.40 of this title (relating to Assessment and Evaluation of Candidates for Certification and Program Improvement), all documentation required under this section shall be retained by an EPP for five years and is subject to audit by Texas Education Agency staff.

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

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201601006
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Earliest possible date of adoption: April 10, 2016
For further information, please call: (512) 475-1497

CHAPTER 232. GENERAL CERTIFICATION PROVISIONS

SUBCHAPTER A. CERTIFICATE RENEWAL AND CONTINUING PROFESSIONAL EDUCATION REQUIREMENTS

The State Board for Educator Certification (SBEC) proposes amendments to 19 TAC §§232.7, 232.9, 232.11, 232.13, 232.15, 232.17, 232.19, 232.21, and 232.23 and repeal of 19 TAC §232.27, concerning certificate renewal and continuing professional education (CPE) requirements. The sections establish the renewal requirements relating to types and classes of certificates issued and CPE. The proposed amendments to 19 TAC §§232.7, 232.9, 232.11, 232.13, 232.15, 232.17, 232.19, 232.21, and 232.23 would implement the requirement from the 84th Texas Legislature, Regular Session, 2015, to allow educators to receive credit for completion of an instructional course on the use of an automated external defibrillator (AED) and would further clarify certificate renewal and CPE requirements. The proposed repeal of 19 TAC §232.27 would further clarify certificate renewal and CPE requirements.

Current 19 TAC Chapter 232, General Certification Provisions, establishes the renewal requirements relating to types and classes of certificates issued, CPE, and national criminal history record information review.

The proposed rule actions would amend 19 TAC §§232.7, 232.9, 232.11, 232.13, 232.15, 232.17, 232.19, 232.21, and 232.23 and repeal 19 TAC §232.27. The proposed rule actions to 19 TAC Chapter 232 identify necessary changes based on recent legislation passed during the 84th Texas Legislature, Regular Session, 2015, and reflect input received from the SBEC and Texas Education Agency (TEA) staff-convened stakeholder meetings. The proposed rule actions also result from the SBEC's rule review of 19 TAC Chapter 232 conducted in accordance with Texas Government Code, §2001.039.

§232.7. Requirements for Certificate Renewal

Language would be amended to delete subsection (c) that requires licensure, certification, or registration to be current and in good standing before career and technical education (CTE) certificates can be renewed. TEA staff recommends this rule change to ensure no classroom certificate area is treated differently from others as it relates to certificate renewal requirements. Because current CPE requirements state that at least 80% of the hours should be directly related to the certificate(s) being renewed, TEA staff believes that CTE certificate holders can maintain focused training in their area(s) of certification and remain current in the knowledge and skills necessary to successfully deliver instruction and positively influence student learning. The remaining subsections would be relettered accordingly.

§232.9. Inactive Status and Late Renewal

Language would be amended in subsection (d) to require a person whose certificate has become inactive because of failure to renew to verify through an affidavit that the person is in compliance with renewal requirements. Proposed new subsection (e) would confirm TEA staff is responsible for completing audits of educator CPE hours. The auditing procedures would be dependent on the availability of TEA resources and may include random audits. TEA staff will be responsible for contacting educators directly and providing them with all information needed to submit required documentation for completion of certificate renewal audits. The language would also confirm that the TEA staff may require written documentation of all activities applied toward CPE requirements. Proposed new subsection (f) would confirm that a person who falsifies information submitted on an affidavit could be subject to criminal liability and educator certification sanction. These proposed changes would clarify the process to reactivate an inactive certificate as well as the process that TEA

staff would use to verify that the renewal requirements have been met.

§232.11. Number and Content of Required Continuing Professional Education Hours

Language would be amended in subsection (c) to clarify that at least 80% of the required CPE activities be directly related to the renewal of the certificate(s) being renewed and focus on the standards required for initial issuance of the certificate(s). As a result of SB 382, 84th Texas Legislature, Regular Session, 2015, proposed new subsection (h) would be added to allow an educator to receive credit towards CPE requirements by completing an instructional course on the use of an AED that meets specified AED training guidelines. Proposed new subsection (i) would allow educators to receive CPE credit for completing suicide prevention training that meets the guidelines in the TEC, §21.451, as amended by House Bill 2186, 84th Texas Legislature, Regular Session, 2015.

§232.13. Number of Required Continuing Professional Education Hours by Classes of Certificates

Language would be amended in subsections (c) and (d) to match current wording in subsections (e), (f), and (g) that clearly states the 200-clock hour CPE requirement. Language would also be amended in subsections (c) and (d) to reference the renewal requirements that are specific to the school counselor and school librarian certificates. These proposed changes would clarify and align the requirements for certification renewal.

§232.15. Types of Acceptable Continuing Professional Education Activities

Language would be amended in subsection (a)(1) and (3) to clarify that the activities need to be in the content area knowledge and skills related to the certificate(s) being renewed. This proposed change would align the types of acceptable CPE activities.

§232.17. Pre-Approved Professional Education Provider or Sponsor

Language would be amended in subsection (a)(5) to include Texas public open-enrollment charter schools to the list of pre-approved professional education providers or sponsors. This proposed change would allow certified educators employed by an open-enrollment charter school to receive CPE credit for acceptable CPE activities provided by their employer.

§232.19. Approval of Private Companies, Private Entities, and Individuals

Language would be amended to clarify that this section is only for private companies, private entities, and individuals who seek to provide CPE on their own behalf and not through the sponsorship of a pre-approved provider or sponsor.

§232.21. Provider Registration Requirements

Language would be amended in subsection (c) to require providers to maintain a record of CPE activity for a period of seven years after the activity. This proposed change would assist TEA staff in confirming CPE credits when auditing an educator's renewal requirements. Language would be amended in subsection (d) to clarify that the withdrawal of approval to provide CPE does not entitle a provider or sponsor to a contested-case hearing before the SBEC. Proposed new subsection (f) would allow TEA staff to review the documentation that is required for provider or sponsor approval. If TEA staff determines that a provider or sponsor is operating in violation of applicable laws or rules, the TEA staff may withdraw the approval that had been granted.

§232.23. Verification of Renewal Requirements

Current subsection (c) would be replaced to confirm TEA staff is responsible for completing audits of educator CPE hours. The auditing procedures would be dependent on the availability of TEA resources and may include random audits. TEA staff would be responsible for contacting educators directly and providing them with all information needed to submit required documentation for completion of certificate renewal audits. The language would also confirm that the TEA staff may require written documentation of all activities applied toward CPE requirements. Language in subsection (b) would be moved to proposed new subsection (d).

The proposed amendments and repeal would have no reporting requirements; however, there would be procedural implications. The proposed amendments to 19 TAC §232.9 and §232.23 would clarify that an educator must provide TEA staff with documentation if an educator's certification renewal record is selected for an audit. The documentation may include the documentation described in §232.15, Types of Acceptable Continuing Professional Education Activities, and §232.21, Provider Registration Requirements, but at the minimum, it would include a summary CPE worksheet. The proposed amendments and repeal would clarify locally maintained paperwork requirements for CPE providers. The proposed amendment to 19 TAC §232.21 does not change the documentation requirements for what CPE providers need to maintain regarding CPE activity, but would add a seven-year retention period requirement for CPE providers after a CPE activity is provided. The proposed amendment to 19 TAC §232.21 would clarify that TEA staff may review the documentation required for CPE provider registration.

FISCAL NOTE. Ryan Franklin, associate commissioner for educator leadership and quality, has determined that for the first five-year period the proposed amendments and repeal are in effect there will be no additional fiscal implications for state or local government as a result of enforcing or administering the proposed amendments and repeal.

PUBLIC BENEFIT/COST NOTE. Mr. Franklin has determined that for the first five-year period the proposed amendments and repeal are in effect the public and student benefit anticipated as a result of the proposed amendments and repeal would be clarified certificate renewal requirements relating to the types and classes of certificates issued. There are no additional costs to persons required to comply with the proposed amendments and repeal.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND MICROBUSINESSES. There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins March 11, 2016, and ends April 11, 2016. The SBEC will take registered oral and written comments on the proposed revisions to 19 TAC Chapter 232 at the April 15, 2016 meeting in accordance with the SBEC board operating policies and procedures. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *sbecrules@tea.texas.gov* or faxed to (512)

463-5337. All requests for a public hearing on the proposed amendments and repeal submitted under the Administrative Procedure Act must be received by the Department of Educator Leadership and Quality, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Mr. Ryan Franklin, associate commissioner for educator leadership and quality, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on March 11, 2016.

19 TAC §§232.7, 232.9, 232.11, 232.13, 232.15, 232.17, 232.19, 232.21, 232.23

STATUTORY AUTHORITY. The amendments are proposed under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; §21.0031(f), which clarifies and places certain limits on provisions authorizing termination of an educator's contract for failure to maintain a valid certificate; §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.031(b), which states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(7), which requires the SBEC to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by the Texas Government Code, Chapter 2001; §21.041(b)(8), which requires the SBEC to propose rules that provide for the enforcement of an educator's code of ethics; §21.041(b)(9), which requires the SBEC to propose rules that provide for continuing education requirements; §21.054, which requires classroom teachers, principals, and school counselors to earn continuing professional education units in specific areas and options for meeting those requirements and directs the SBEC to propose rules relating to continuing education courses and programs for educators; and §21.0541, as added by Senate Bill (SB) 382, 84th Texas Legislature, Regular Session, 2015, which requires the SBEC to adopt rules that allow an educator to receive credit towards the educator's continuing education requirements for completion of an instructional course on the use of an automated external defibrillator that meets the guidelines for automated external defibrillator training approved under the Texas Health and Safety Code, §779.002; and the Texas Occupations Code (TOC), §55.002, as amended by SB 1307, 84th Texas Legislature, Regular Session, 2015, which exempts a military service member from increased fees or penalties resulting from failing to timely renew a license; and §55.003, as amended by SB 1307, 84th Texas Legislature, Regular Session, 2015, which grants an extension of two years of additional time to complete license renewal and continuing education requirements to a military service member.

CROSS REFERENCE TO STATUTE. The proposed amendments implement the TEC, §§21.003(a), 21.0031(f), 21.031, 21.041(b)(1)-(4) and (7)-(9), 21.054; and 21.0541, as added by SB 382, 84th Texas Legislature, Regular Session, 2015; and the TOC, §55.002, as amended by SB 1307, 84th Texas Legislature, Regular Session, 2015; and §55.003, as amended by SB 1307, 84th Texas Legislature, Regular Session, 2015.

§232.7. Requirements for Certificate Renewal.

(a) The Texas Education Agency (TEA) staff shall develop procedures to:

(1) notify educators at least six months prior to the expiration of the renewal period to the email address as specified in §230.91 of this title (relating to Procedures in General);

(2) consider requests for hardship when circumstances beyond the control of the educator such as catastrophic illness of the educator or an immediate family member or military service of the educator prevented completion of the renewal requirements. If a hardship exemption is granted, the educator will be given a designated amount of time to complete the required number of continuing professional education clock-hours, apply, and pay the appropriate fee. The granting or denial of a request for extension of a renewal deadline shall be solely within the discretion of TEA staff and shall not be subject to appeal;

(3) confirm compliance with all renewal requirements pursuant to this subchapter;

(4) notify educators who are not renewed due to noncompliance with this section; and

(5) verify that educators applying for reactivation of certificate(s) under §232.9 of this title (relating to Inactive Status and Late Renewal) are in compliance with subsection (b)(2)-(6) of this section.

(b) To be eligible for renewal, an educator must:

(1) satisfy continuing professional education requirements, pursuant to §232.11 of this title (relating to Number and Content of Required Continuing Professional Education Hours);

(2) hold a valid standard certificate that is not currently suspended and has not been surrendered in lieu of revocation or revoked by lawful authority;

(3) not be a respondent in a disciplinary proceeding under Chapter 249 of this title (relating to Disciplinary Proceedings, Sanctions, and Contested Cases);

(4) successfully resolve any reported criminal history, as defined by §249.3 of this title (relating to Definitions);

(5) not be in default on a guaranteed student loan reported by the Texas Guaranteed Student Loan Corporation or a judgment debt for a student loan owed to the Texas Higher Education Coordinating Board, unless repayment arrangements have been made;

(6) not be in arrears of child support, pursuant to the Texas Family Code, Chapter 232;

(7) pay the renewal fee, pursuant to §232.25 of this title (relating to Fees Payable Upon Certificate Renewal or Reactivation), which shall be a single fee regardless of the number of certificates being renewed; and

(8) submit fingerprints in accordance with §232.35(c) of this title (relating to Submission of Required Information) and the TEC, §22.0831.

[~~(c) When renewing career and technical education certifications that require licensure, certification, or registration by a state or nationally recognized accrediting agency as a professional practitioner in one or more approved occupations for which instruction is offered, licensure, certification, or registration shall be current and in good standing.~~]

(c) [~~(d)~~] The TEA staff shall renew the certificate(s) of an educator who meets all requirements of this subchapter.

(d) [~~(e)~~] The State Board for Educator Certification shall stay the renewal of an educator's certificate(s) who fails to comply with subsection (b)(3) of this section, pending resolution of the disciplinary action. A certificate that is not suspended, surrendered in lieu of revocation, or revoked shall be renewed upon the final resolution of the disciplinary action provided that all other requirements have been satisfied. The renewal of a suspended certificate shall be stayed until the certificate has been reinstated. Payment of a late fee shall not be required if the late renewal is solely due to the pendency of a disciplinary action or to a suspension.

§232.9. Inactive Status and Late Renewal.

(a) The certificate(s) of an educator holding a valid standard certificate who does not satisfy the requirements of this subchapter shall be placed on inactive status, subject to the requirements of the Texas Education Code, §21.0031(f). At any time, the educator may apply under procedures adopted by the Texas Education Agency (TEA) staff to have his or her certificate(s) reactivated and submit the reactivation fee. Reactivation of the educator's certificate(s) is subject to verification by the State Board for Educator Certification (SBEC) that the educator is in compliance with §232.7 of this title (relating to Requirements for Certificate Renewal). The renewal date of a reactivated certificate(s) shall be five years after the last day of the certificate holder's next birth month.

(b) Under procedures approved by the SBEC, the TEA staff shall notify a person by email of the reason(s) for denying the renewal and the actions or conditions required for removal from inactive status.

(c) A person who satisfies all requirements for renewal after the renewal date of a certificate shall pay a late renewal fee in addition to the standard renewal fee. A person whose certificate has become inactive because of failure to renew shall also pay a reactivation fee. The amount of these fees shall be as provided in §230.101 of this title (relating to Schedule of Fees for Certification Services).

(d) If a person does not satisfy the required continuing professional education (CPE) hours at the expiration of the renewal period, the person may have the certificate(s) removed from inactive status and reactivated by verifying through an affidavit in a manner determined by the TEA staff whether he or she is in compliance with renewal requirements, including CPE hours, [~~filing with the SBEC, on a form developed by the TEA staff, evidence of completion of the required CPE hours~~] and paying any applicable fee(s).

(e) The TEA staff shall be responsible for auditing compliance with renewal requirements. The TEA audit procedures shall be based on available resources and may include random audits. The TEA staff shall contact an educator selected for an audit of his or her renewal requirements and provide the educator with information needed to submit the documentation that supports certificate renewal. The TEA staff at any time may review the documentation required for renewal under this subchapter, which may include the documentation described in §232.15 of this title (relating to Types of Acceptable Continuing Professional Education Activities) and §232.21 of this title (relating to Provider Registration Requirements).

(f) If it is determined that a person falsified any information submitted on the affidavit, the person could be subject to criminal liability and educator certification sanction.

§232.11. Number and Content of Required Continuing Professional Education Hours.

(a) The appropriate number of clock-hours of continuing professional education (CPE), as specified in §232.13 of this title (relating to Number of Required Continuing Professional Education Hours by Classes of Certificates), must be completed during each five-year renewal period.

(b) One semester credit hour earned at an accredited institution of higher education is equivalent to 15 CPE clock-hours.

(c) At least 80% of the CPE activities shall [~~should~~] be directly related to the certificate(s) being renewed and focus on the standards required for the initial issuance of the certificate(s), including:

(1) content area knowledge and skills;

(2) professional ethics and standards of conduct;

(3) professional development, which should encompass topics such as the following:

(A) district and campus priorities and objectives;

(B) child development, including research on how children learn;

(C) classroom management;

(D) applicable federal and state laws;

(E) diversity and special needs of student populations;

(F) increasing and maintaining parental involvement;

(G) integration of technology into educational practices;

(H) ensuring that students read on or above grade level;

(I) diagnosing and removing obstacles to student achievement; and

(J) instructional practices.

(4) Not more than 25% of the CPE activities for a classroom teacher shall include instruction regarding:

(A) collecting and analyzing information that will improve effectiveness in the classroom;

(B) recognizing early warning indicators that a student may be at risk of dropping out of school;

(C) integrating technology into classroom instruction; and

(D) educating diverse student populations, including:

(i) students with disabilities, including mental health disorders;

(ii) students who are educationally disadvantaged;

(iii) students of limited English proficiency; and

(iv) students at risk of dropping out of school.

(5) Not more than 25% of the CPE activities for a principal shall include instruction regarding:

(A) effective and efficient management, including:

(i) collecting and analyzing information;

(ii) making decisions and managing time; and

(iii) supervising student discipline and managing behavior;

(B) recognizing early warning indicators that a student may be at risk of dropping out of school;

(C) integrating technology into campus curriculum and instruction; and

(D) educating diverse student populations, including:

(i) students with disabilities, including mental health disorders;

(ii) students who are educationally disadvantaged;

(iii) students of limited English proficiency; and

(iv) students at risk of dropping out of school.

(6) Not more than 25% of the CPE activities for a school counselor shall include instruction regarding:

(A) assisting students in developing high school graduation plans;

(B) implementing dropout prevention strategies; and

(C) informing students concerning:

(i) college admissions, including college financial aid resources and application procedures; and

(ii) career opportunities.

(d) Educators are encouraged to identify CPE activities based on results of his or her annual appraisal required under the Texas Education Code, Chapter 21, Subchapter H.

(e) The required CPE for educators who teach students with dyslexia must include training regarding new research and practices in educating students with dyslexia. The required training may be satisfied through an online course approved by Texas Education Agency staff.

(f) An educator eligible to renew multiple classes of certificates issued during the same renewal period may satisfy the requirements specified in §232.13 of this title for any class of certificate issued for less than the full five-year period by completing a prorated number of the required CPE clock-hours. Educators must complete a minimum of one-fifth of the additional CPE clock-hours for each full calendar year that the additional class of certificate is valid.

(g) An educator may fulfill up to 12 clock-hours of required CPE activities by participating in a mental health first aid training program offered by a local mental health authority under the Texas Health and Safety Code, §1001.203. The number of clock-hours of CPE an educator may fulfill under this subsection may not exceed the number of clock-hours the educator actually spends participating in a mental health first aid training program.

(h) An educator may receive credit towards CPE requirements for completion of an instructional course on the use of an automated external defibrillator (AED) that meets the guidelines for AED training approved under Texas Health and Safety Code, §779.002, in accordance with the Texas Education Code (TEC), §21.0541.

(i) An educator may receive credit towards CPE requirements for completion of suicide prevention training that meets the guidelines for suicide prevention training approved under the TEC, §21.451.

§232.13. Number of Required Continuing Professional Education Hours by Classes of Certificates.

(a) Holders of the Standard Superintendent Certificate shall complete 200 clock-hours of continuing professional education (CPE) every five years. Specific requirements are contained in §242.30 of this title (relating to Requirements to Renew the Standard Superintendent Certificate).

(b) Holders of the Standard Principal Certificate shall complete 200 clock-hours of CPE every five years. Specific requirements are contained in §241.30 of this title (relating to Requirements to Renew the Standard Principal Certificate).

(c) Holders of the Standard School Counselor Certificate shall complete 200 clock-hours of CPE [~~training as specified in §239.25(a) of this title (relating to Requirements to Renew the Standard School Counselor Certificate)~~] every five years. Specific requirements are contained in §239.25 of this title (relating to Requirements to Renew the Standard School Counselor Certificate).

(d) Holders of the Standard School Librarian Certificate and Learning Resources Specialist Certificate shall complete 200 clock-hours of CPE [~~training as specified in §239.65(a) of this title (relating to Requirements to Renew the Standard School Librarian Certificate)~~] every five years. Specific requirements are contained in §239.65 of this title (relating to Requirements to Renew the Standard School Librarian Certificate).

(e) Holders of the Standard Educational Diagnostician Certificate shall complete 200 clock-hours of CPE every five years.

(f) Holders of the Standard Reading Specialist Certificate shall complete 200 clock-hours of CPE every five years.

(g) Holders of the Standard Master Teacher Certificate shall complete 200 clock-hours of CPE every five years.

(h) Holders of the Standard Classroom Teacher Certificate shall complete 150 clock-hours of CPE every five years. Specific requirements are contained in §232.11 of this title (relating to Number and Content of Required Continuing Professional Education Hours).

(i) Holders of the Standard Educational Aide Certificate are exempt from the provisions of §232.11 of this title.

(j) Holders of professional certificates issued prior to September 1, 1999, who opt into the Standard Certificate pursuant to §232.3 of this title (relating to Voluntary Renewal of Current Texas Educators) shall complete 200 clock-hours of CPE every five years.

(k) Holders of provisional certificates issued prior to September 1, 1999, who opt into the Standard Certificate pursuant to §232.3 of this title shall complete 150 clock-hours of CPE every five years.

(l) An educator holding multiple classes of certificates shall complete the higher number of required CPE clock-hours in the held classes during each five-year renewal period unless otherwise specified in applicable State Board for Educator Certification rules codified in the Texas Administrative Code, Title 19, Part 7.

(m) Holders of a Standard Certificate in other professional areas must complete 200 clock-hours of CPE every five years.

§232.15. Types of Acceptable Continuing Professional Education Activities.

(a) The following are acceptable types of continuing professional education (CPE) activities:

(1) participating in institutes, workshops, seminars, conferences, interactive distance learning, video conferencing, online activities, and in-service or staff development activities given by an approved provider or sponsor, pursuant to §232.21 of this title (relating to Provider Registration Requirements), in content area knowledge and skills related to the certificate(s) being renewed [~~which are related to or enhance the professional knowledge and skills of the educator~~]. Staff development activities completed through accredited public and private schools in other states, United States territories, and countries other than the United States may be accepted;

(2) completing undergraduate courses in content area knowledge and skills related to the certificate(s) being renewed, graduate courses, or training programs that are taken through an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordinating Board or as outlined in §230.1 of this title (relating to Definitions);

(3) participating in an independent study in content area knowledge and skills related to the certificate(s) being renewed, not to exceed 20% of the required clock-hours, which may include:

(A) self-study of relevant professional materials (e.g., books, journals, periodicals, video and audio tapes, computer software, interactive distance learning, video conferencing, or online activities);

(B) developing curriculum; or

(C) authoring a published work;

(4) developing, teaching, or presenting a CPE activity described in this subsection or subsection (b) of this section, not to exceed 10% of the required clock-hours; and

(5) providing professional guidance as a mentor to another educator, not to exceed 30% of the required clock-hours.

(b) Completion of each CPE activity should be evidenced by documentation (e.g., transcripts, certificates of completion, or attendance logs).

§232.17. Pre-Approved Professional Education Provider or Sponsor.

(a) The following may provide and/or sponsor continuing professional education (CPE) activities and must comply with the provisions of §232.21 of this title (relating to Provider Registration Requirements). Pre-approved providers include:

(1) State Board for Educator Certification;

(2) Texas Education Agency;

(3) accredited institutions of higher education that at the time were accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordinating Board;

(4) regional education service centers;

(5) Texas public school districts and open-enrollment charter schools. To be creditable toward CPE requirements, school district in-service and/or staff development activities must be developed, approved, and conducted in accordance with the Texas Education Code, §21.451;

(6) private schools, as defined in §230.1 of this title (relating to Definitions); and

(7) professional membership associations or non-profits that have offered professional development in Texas for at least five years and have tax-exempt status under 26 United States Code, §501(c)(3)-(6), or a state association affiliated with a national association with tax-exempt status.

(b) If private companies, entities, and individuals provide CPE activities on behalf of a pre-approved provider, the pre-approved provider is responsible for ensuring compliance with quality and documentation requirements of §232.21 of this title.

§232.19. Approval of Private Companies, Private Entities, and Individuals.

Private companies, private entities, and individuals who wish to provide continuing professional education (CPE) for Texas educators on their own behalf [~~and administrators~~] must register with the State Board for Educator Certification and be approved under §232.21 of this title (relating to Provider Registration Requirements).

(1) The Texas Education Agency staff shall develop procedures to approve as providers and/or sponsors any other person, agency, or entity seeking to offer CPE activities pursuant to the requirements of this subchapter.

(2) It is the responsibility of the educator to verify the approval status of any CPE provider prior to completion of the CPE activities.

§232.21. Provider Registration Requirements.

(a) Procedures adopted by the Texas Education Agency (TEA) staff require all pre-approved and all other continuing professional education (CPE) providers or sponsors to register with the State Board for Educator Certification (SBEC) by submitting the relevant sections of the provider registration form designated by the TEA staff in order to accomplish any or all of the following, as applicable:

(1) notify the TEA staff of the intent to offer CPE activities;

(2) affirm compliance with all applicable statutes and rules;

(3) prohibit discrimination in the provision of CPE activities to any certified educator;

(4) document that each CPE activity:

(A) complies with applicable SBEC rules codified in the Texas Administrative Code, Title 19, Part 7;

(B) contributes to the advancement of professional knowledge and skills identified by standards adopted by the SBEC for each certificate;

(C) is developed and presented by persons who are appropriately knowledgeable in the subject matter of the training being offered; and

(D) specifies the content under §232.11 of this title (relating to Number and Content of Required Continuing Professional Education Hours) and number of creditable CPE clock-hours; and

(5) on a biennial or more frequent basis, conduct a comprehensive, in-depth self-study to assess the CPE needs and priorities of educators served by the provider as well as the quality of the CPE activities offered.

(b) At the conclusion of each activity offered for CPE credit, the provider or sponsor must provide to each educator in attendance written documentation listing, at a minimum, the provider's name and provider number, the educator's name, the date and content of the activity, and the number of clock-hours that count toward satisfying CPE requirements.

(c) All providers are required to maintain a record [~~list~~] of CPE activities [~~provided~~] that includes a list of attendees, the date and content of the activity, and the number of clock-hours that count toward satisfying CPE requirements. Providers shall retain a record of CPE activity for a period of seven years after the activity is completed.

(d) A [~~The failure of the TEA staff to approve a~~] provider or sponsor that is not granted approval or has its approval withdrawn by the TEA staff is [~~does~~] not entitled [~~entitle that provider or sponsor~~] to a contested-case hearing before the SBEC or a person designated by the SBEC to conduct contested-case hearings.

(e) The TEA staff shall develop procedures to receive and investigate complaints against a provider or sponsor alleging noncompliance with this section. If the investigation determines that the provider or sponsor is operating in violation of any applicable provision of state law or rule, the TEA staff may withdraw the approval granted under this section to the provider or sponsor.

(f) The TEA staff at any time may review the documentation required for provider registration under this section. If TEA staff determines that the provider or sponsor is operating in violation of any applicable provision of state law or rule, the TEA staff may withdraw the approval granted under this section to the provider or sponsor.

§232.23. Verification of Renewal Requirements.

(a) Written documentation of completion of all activities applied toward continuing professional education (CPE) requirements shall be maintained by each educator.

(b) By the date renewal is required, the educator shall verify through an affidavit in a manner determined by the Texas Education Agency (TEA) staff whether he or she is in compliance with renewal requirements, including CPE. [~~If it is determined that an educator falsified any information submitted on the affidavit, the educator could be subject to criminal liability and educator certification sanction.~~]

(c) The TEA staff shall be responsible for auditing compliance with renewal requirements. The TEA audit procedures shall be based on available resources and may include random audits. The TEA staff shall contact an educator selected for an audit of his or her renewal requirements and provide the educator with information needed to submit the documentation that supports certificate renewal. The TEA staff at any time may review the documentation required for renewal under this subchapter, which may include the documentation described in §232.15 of this title (relating to Types of Acceptable Continuing Professional Education Activities) and §232.21 of this title (relating to Provider Registration Requirements).

(d) If it is determined that an educator falsified any information submitted on the affidavit, the educator could be subject to criminal liability and educator certification sanction.

[~~(c) The TEA staff at any time may review the documentation required for renewal under this subchapter.~~]

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

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Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
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For further information, please call: (512) 475-1497

♦ ♦ ♦

19 TAC §232.27

STATUTORY AUTHORITY. The repeal is proposed under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; §21.0031(f), which clarifies and places certain limits on provisions authorizing termination of an educator's contract for failure to maintain a valid certificate; §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.031(b), which states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(7), which requires the SBEC to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by the Texas Government Code, Chapter 2001; §21.041(b)(8), which requires the SBEC to propose rules that provide for the enforcement of an educator's code of ethics; §21.041(b)(9), which requires the SBEC to propose rules that provide for continuing education requirements; §21.054, which requires classroom teachers, principals, and school counselors to earn continuing professional education units in specific areas and options for meeting those requirements and directs the SBEC to propose rules relating to continuing education courses and programs for educators; and §21.0541, as added by Senate Bill (SB) 382, 84th Texas Legislature, Regular Session, 2015, which requires the SBEC to adopt rules that allow an educator to receive credit towards the educator's continuing education requirements for completion of an instructional course on the use of an automated external defibrillator that meets the guidelines for automated external defibrillator training approved under the Texas Health and Safety Code, §779.002; and the Texas Occupations Code (TOC), §55.002, as amended by SB 1307, 84th Texas Legislature, Regular Session, 2015, which exempts a military service member from increased fees or penalties resulting from failing to timely renew a license; and §55.003, as amended by SB 1307, 84th Texas Legislature, Regular Session, 2015, which grants an extension of two years of additional time to complete license renewal and continuing education requirements to a military service member.

CROSS REFERENCE TO STATUTE. The proposed repeal implements the TEC, §§21.003(a), 21.0031(f), 21.031, 21.041(b)(1)-(4) and (7)-(9), 21.054; and 21.0541, as added by SB 382, 84th Texas Legislature, Regular Session, 2015; and the TOC, §55.002, as amended by SB 1307, 84th Texas Legislature, Regular Session, 2015; and §55.003, as amended by SB 1307, 84th Texas Legislature, Regular Session, 2015.

§232.27. Renewal and Continuing Education Requirements for Military Service Members.

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

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Cristina De La Fuente-Valadez
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CHAPTER 234. MILITARY SERVICE MEMBERS, MILITARY SPOUSES, AND MILITARY VETERANS

19 TAC §§234.1, 234.3, 234.5, 234.7

The State Board for Educator Certification (SBEC) proposes new 19 TAC §§234.1, 234.3, 234.5, and 234.7, concerning requirements for military service members, military spouses, and military veterans. The sections establish requirements for the certification of a military service member, military veteran, or military spouse and the renewal and continuing education requirements for military service members. Proposed new 19 TAC §§234.1, 234.3, 234.5, and 234.7 would address recent legislation, consolidate rules specific to the military community into one chapter, and streamline future military-related rulemaking opportunities.

The 84th Texas Legislature, Regular Session, 2015, passed Senate Bill (SB) 807, which requires all state licensing agencies to adopt rules that implement the requirements of the Texas Occupations Code (TOC), Chapter 55, regarding the licensing of military service members, military spouses, and military veterans and the waiving of licensing and application fees paid to the state. The 84th Texas Legislature also passed SB 1307, which clarifies definitions of military spouses and military veterans in key sections of the TOC, allows for the adoption of rules to establish alternative methods for military groups to meet requirements for licensure, grants the executive director of a state agency to review applicant credentials and waive requirements for licensure, and incorporates the use of verified military service to satisfy apprenticeship requirements for licensure.

In addition, the 84th Texas Legislature passed House Bill 2014, which allows military service members seeking certification in career and technical education to substitute experience in a particular trade for the license or professional credential in the specific trade.

Proposed new 19 TAC Chapter 234 would consolidate all military-related provisions into one chapter. The military-related provisions currently outlined in 19 TAC §230.15, Certification of Military Service Members, Military Spouses, and Military Veterans, and 19 TAC §232.27, Renewal and Continuing Education Requirements for Military Service Members, would be repealed as applicable from 19 TAC Chapter 230 and 19 TAC Chapter 232. These provisions would be incorporated into the new military chapter as proposed new 19 TAC §234.5 and 19 TAC §234.7, respectively. Proposed new 19 TAC §234.5(g) and (h) would satisfy the provisions in SB 807 and align with current SBEC rules.

Proposed new 19 TAC Chapter 234 would also streamline future military-related rulemaking opportunities by having all military-related provisions in one chapter.

The proposed rule actions would have no procedural and reporting implications. Also, the proposed rule actions would have no locally maintained paperwork requirements.

FISCAL NOTE. Ryan Franklin, associate commissioner for educator leadership and quality, has determined that for the first five-year period the proposed new sections are in effect there will be fiscal implications for state government as a result of enforcing or administering the proposed new sections.

The estimated cost to the state (TEA) begins with Fiscal Year (FY) 2016 based on the September 1, 2015 effective date of SB 807, 84th Texas Legislature, Regular Session, 2015. Based on current tracking of legislation effective September 1, 2015, the TEA estimates the number of individuals that would apply for certification at 500 for FY 2016, 550 for FY 2017, 605 for FY 2018, 665 for FY 2019, and 731 for FY 2020. The TEA estimates that approximately 75% would apply through the out-of-state route to certification while 25% would apply through the educator preparation program (EPP) route to certification.

For the TEA, the total estimated cost would be $143,500 for FY 2016, $157,940 for FY 2017, $173,500 for FY 2018, $190,720 for FY 2019, and $209,752 for FY 2020. The total estimated cost for each year of FY 2016-FY 2020 is based on fees for the out-of-state route to certification (test fees of $22, credential review fee of $180, and certificate issuance fees of $52 and $78) and the EPP route to certification (test fees of $22 and certificate issuance fees of $52 and $78).

For the TEA, the estimated loss in revenue would be $143,500 for FY 2016, $157,940 for FY 2017, $173,500 for FY 2018, $190,720 for FY 2019, and $209,752 for FY 2020. This estimate is based on the fees that the TEA would not be collecting.

The TEA staff has determined that there is no additional fiscal impact on local government as a result of enforcing or administering the proposed new sections.

There is an anticipated economic savings to persons who are required to comply with the proposed new sections. For individuals (military service members, military spouses, and military veterans) not required under SB 807 to pay certification fees, the total estimated savings would be approximately $143,500 for FY 2016, $157,940 for FY 2017, $173,500 for FY 2018, $190,720 for FY 2019, and $209,752 for FY 2020. Based on current fees an individual would save $152 or $332 depending on the route to certification.

PUBLIC BENEFIT/COST NOTE. Mr. Franklin has determined that for the first five-year period the proposed new sections are in effect the public and student benefit anticipated as a result of the proposed new sections would be implementing statutory provisions for expediting and facilitating the educator certification of military service members, military spouses, and military veterans. The anticipated economic cost to persons who are required to comply with the proposed new sections is described earlier under Fiscal Note.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND MICROBUSINESSES. There is no direct adverse economic

impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins March 11, 2016, and ends April 11, 2016. The SBEC will take registered oral and written comments on proposed new 19 TAC Chapter 234 at the April 15, 2016 meeting in accordance with the SBEC board operating policies and procedures. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *sbecrules@tea.texas.gov* or faxed to (512) 463-5337. All requests for a public hearing on the proposed new sections submitted under the Administrative Procedure Act must be received by the Department of Educator Leadership and Quality, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Mr. Ryan Franklin, associate commissioner for educator leadership and quality, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on March 11, 2016.

STATUTORY AUTHORITY. The new sections are proposed under the Texas Education Code (TEC), §21.041(b)(2), which requires the State Board for Educator Certification (SBEC) to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.044(a), which requires the SBEC to propose rules establishing training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; and §21.054, which requires classroom teachers, principals, and school counselors to earn continuing professional education units in specific areas and options for meeting those requirements and directs the SBEC to propose rules relating to continuing education courses and programs for educators; and the Texas Occupations Code (TOC), §55.001, as amended by Senate Bill (SB) 1307, 84th Texas Legislature, Regular Session, 2015, which defines *active duty, armed forces of the United States, license, military service member, military spouse, military veteran,* and *state agency;* §55.002, as amended by SB 1307, 84th Texas Legislature, Regular Session, 2015, which exempts a military service member from increased fees or penalties resulting from failing to timely renew a license; §55.003, as amended by SB 1307, 84th Texas Legislature, Regular Session, 2015, which grants an extension of two years of additional time to complete license renewal and continuing education requirements to a military service member; §55.004, as amended by SB 1307 and House Bill (HB) 3742, 84th Texas Legislature, Regular Session, 2015, which provides an alternative licensing procedure for military service members, military veterans, and military spouses; §55.005, as amended by SB 1307, 84th Texas Legislature, Regular Session, 2015, which provides an expedited licensing procedure for military service members, military veterans, and military spouses; §55.006, as amended by SB 1307, 84th Texas Legislature, Regular Session, 2015, which provides for renewal of an expedited license issued to a military service member, military veteran, or military spouse; §55.007, which provides that verified military service, training, and education be credited toward licensing requirements; §55.008, as amended by SB 1296 and SB 1307, 84th Texas Legislature, Regular Session, 2015, which requires state agencies to credit military service, training or education toward apprenticeship requirements for applicants with military experience; and §55.009, as added by SB 807 and SB 1307, 84th Texas Legislature, Regular Session, 2015, which waives the license application and examination fees for certain military service members, military veterans, and military spouses and requires a state agency that issues a license to prominently post a notice of the provisions in the TOC, Chapter 55, that are available to military service members, military veterans, and military spouses on the home page of the agency's website.

CROSS REFERENCE TO STATUTE. The proposed new sections implement the TEC, §§21.041(b)(2) and (4); 21.044(a); and 21.054; and Texas Occupations Code, §§55.001-55.003, 55.005, and 55.006, as amended by SB 1307, 84th Texas Legislature, Regular Session, 2015; 55.004, as amended by SB 1307 and HB 3742, 84th Texas Legislature, Regular Session, 2015; 55.007; 55.008, as amended by SB 1296 and SB 1307, 84th Texas Legislature, Regular Session, 2015; and 55.009, as added by SB 807 and SB 1307, 84th Texas Legislature, Regular Session, 2015.

§234.1. Purpose.

(a) The purpose of identifying military service members, military spouses, and military veterans is to establish a process to count applicable military service for timely admission into educator preparation programs, expedite the completion of certification credential reviews, support certification examination and licensure application fee exemptions as applicable, and support certification renewal of members of the military community.

(b) In the event of conflict with any other rule in the Texas Administrative Code, Title 19, Part 7, this chapter shall supersede with regard to the certification of military service members, military spouses, and military veterans.

§234.3. Definitions.

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

(1) Military service member--A person who is on active duty.

(2) Military spouse--A person who is married to a military service member.

(3) Military veteran--A person who has served on active duty and who was discharged or released from active duty.

(4) Active duty--Current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, as defined by the Texas Government Code, §437.001, or similar military service of another state.

(5) Armed forces of the United States--The army, navy, air force, coast guard, or marine corps of the United States or a reserve unit of one of those branches of the armed forces.

§234.5. Certification of Military Service Members, Military Spouses, and Military Veterans.

(a) The application for certification of a military service member, military veteran, or military spouse, including an application based upon certification by a jurisdiction other than Texas that has certification requirements substantially similar to the Texas certification requirements, shall be processed as soon as practicable.

(b) As soon as practicable after the issuance of a one-year certificate, Texas Education Agency (TEA) staff shall notify, in writing or by email, a military spouse of the requirements for obtaining a standard Texas certificate. A military spouse whose active duty spouse has

been reassigned to another state during the validity period of the first one-year certificate would be eligible for a second one-year certificate.

(c) The standard Texas certificate of a military service member, military spouse, or military veteran may be renewed if that certificate has expired within five years preceding the Texas application date.

(d) A military service member or a military veteran shall be entitled to credit verified military service, training, or education toward the training, education, work experience, or related requirements (other than certification examinations) for educator certification. TEA staff and educator preparation programs (EPPs) shall use information from the U.S. Department of Veterans Affairs or other reliable sources to assist in crediting applicable military service, training, or education to certification requirements.

(e) A military service member pursuing certification in career and technical education must meet requirements for the certificate, but for career and technical education certificate areas requiring experience and licensure, the military service member shall be entitled to substitute military experience in the trade for the required license or professional credential for the specific trade.

(f) A military service member, military spouse, and military veteran shall complete educator examination requirements for certificate issuance as outlined in Texas Education Code, Chapter 21, Subchapter B, and rules in the Texas Administrative Code, Title 19, Part 7.

(g) Military service members and military veterans are exempt from certification application fees that are paid to the state that lead to initial certification. These members of the military community are exempt from paying the portion of the examination registration fee that is paid to the TEA.

(h) Military service members, military spouses, and military veterans are exempt from certification application fees that are paid to the state that lead to initial certification resulting from a review of credentials, one-year certificate, or out-of-state standard certificate. These members of the military community are exempt from paying the portion of the examination registration fee that is paid to the TEA.

§234.7. Renewal and Continuing Education Requirements for Military Service Members.

(a) A military service member shall be exempted from any fee or penalty for failing to timely renew his or her Texas educator certificate if the delay occurred because the educator was serving as a military service member.

(b) A military service member is entitled to two years of additional time to complete all continuing education requirements and any other requirements relating to the renewal of his or her Texas educator certificate.

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

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Cristina De La Fuente-Valadez
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CHAPTER 241. PRINCIPAL CERTIFICATE

The State Board for Educator Certification (SBEC) proposes the repeal of 19 TAC §241.15 and new 19 TAC §241.15, concerning the principal certificate. The section provides standards required for the principal certificate. The proposed new section would update the standards required for principal certification, including those standards taught by principal preparation programs and tested on the state certification examination, and align the standards with the commissioner of education's principal appraisal standards.

In December 2014, Texas Education Agency (TEA) staff held a stakeholder meeting to discuss the rules in 19 TAC Chapter 241 as part of the rule review process. During the review process, the stakeholder group determined that the principal certificate standards in 19 TAC §241.15 needed to be modernized and aligned with the commissioner's principal appraisal standards found in 19 TAC Chapter 149.

At its March 2015 meeting, the SBEC approved the standards review committee for 19 TAC Chapter 241. The committee met in April 2015 to develop recommended changes to the principal standards. The committee subsequently worked with TEA staff to provide additional feedback prior to presenting draft rule changes to the SBEC at the December 2016 meeting.

The proposed rule actions would repeal the current principal standards and replace them with new principal standards. Proposed new 19 TAC §241.15 would better align the standards with the knowledge and skills required for today's principals and with the commissioner's principal appraisal standards. The proposed new section would also elevate school culture and instructional leadership as two areas of principal development that should receive additional and focused attention by preparation programs. The proposed rule actions also result from the SBEC's rule review of 19 TAC Chapter 241 conducted in accordance with Texas Government Code, §2001.039.

The proposed rule actions would have no procedural and reporting implications. Also, the proposed rule actions would have no locally maintained paperwork requirements.

FISCAL NOTE. Ryan Franklin, associate commissioner for educator leadership and quality, has determined that for the first five-year period the proposed repeal and new section are in effect there will be fiscal implications based on costs for state government (TEA) as a result of enforcing or administering the proposed repeal and new section for fiscal year (FY) 2017. Revising the principal standards for certification would lead to the creation of a new principal certification examination that would align with the new standards. The creation of the new examination is estimated to cost approximately $265,000. There are no additional costs to local government as a result of enforcing or administering the proposed repeal and new section.

PUBLIC BENEFIT/COST NOTE. Mr. Franklin has determined that for the first five-year period the proposed repeal and new section are in effect the public and student benefit anticipated as a result of the proposed repeal and new section would be the alignment of principal preparation and certification standards with contemporary principal practices and principal appraisal and professional development standards, which will lead to better development of principals throughout their careers. There are no additional costs to persons required to comply with the proposed repeal and new section.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND MICROBUSINESSES. There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins March 11, 2016, and ends April 11, 2016. The SBEC will take registered oral and written comments on proposed repeal and new 19 TAC §241.15 at the April 15, 2016 meeting in accordance with the SBEC board operating policies and procedures. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *sbecrules@tea.texas.gov* or faxed to (512) 463-5337. All requests for a public hearing on the proposed repeal and new section submitted under the Administrative Procedure Act must be received by the Department of Educator Leadership and Quality, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Mr. Ryan Franklin, associate commissioner for educator leadership and quality, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on March 11, 2016.

19 TAC §241.15

STATUTORY AUTHORITY. The repeal is proposed under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; §21.041(b)(4), which requires the State Board for Educator Certification (SBEC) to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.046(b), which states that the qualifications for certification as a principal must be sufficiently flexible so that an outstanding teacher may qualify by substituting approved experience and professional training for part of the educational requirements; §21.046(c), which states that because an effective principal is essential to school improvement, the SBEC shall ensure that each candidate for certification as a principal is of the highest caliber and that multi-level screening processes, validated comprehensive assessment programs, and flexible internships with successful mentors exist to determine whether a candidate for certification as a principal possesses the essential knowledge, skills, and leadership capabilities necessary for success; and §21.046(d), which states that in creating the qualifications for certification as a principal, the SBEC shall consider the knowledge, skills, and proficiencies for principals as developed by relevant national organizations and the State Board of Education.

CROSS REFERENCE TO STATUTE. The proposed repeal implements the TEC, §§21.003(a), 21.041(b)(4), and 21.046(b)-(d).

§241.15. Standards Required for the Principal Certificate.

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

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201601010
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Earliest possible date of adoption: April 10, 2016
For further information, please call: (512) 475-1497

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19 TAC §241.15

STATUTORY AUTHORITY. The new section is proposed under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; §21.041(b)(4), which requires the State Board for Educator Certification (SBEC) to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.046(b), which states that the qualifications for certification as a principal must be sufficiently flexible so that an outstanding teacher may qualify by substituting approved experience and professional training for part of the educational requirements; §21.046(c), which states that because an effective principal is essential to school improvement, the SBEC shall ensure that each candidate for certification as a principal is of the highest caliber and that multi-level screening processes, validated comprehensive assessment programs, and flexible internships with successful mentors exist to determine whether a candidate for certification as a principal possesses the essential knowledge, skills, and leadership capabilities necessary for success; and §21.046(d), which states that in creating the qualifications for certification as a principal, the SBEC shall consider the knowledge, skills, and proficiencies for principals as developed by relevant national organizations and the State Board of Education.

CROSS REFERENCE TO STATUTE. The proposed new section implements the TEC, §§21.003(a), 21.041(b)(4), and 21.046(b)-(d).

§241.15. Standards Required for the Principal Certificate.

(a) Principal Certificate Standards. The knowledge and skills identified in this section must be used by an educator preparation program in the development of curricula and coursework and by the State Board for Educator Certification as the basis for developing the examinations required to obtain the standard Principal Certificate. The standards also serve as the foundation for the individual assessment, professional growth plan, and continuing professional education activities required by §241.30 of this title (relating to Requirements to Renew the Standard Principal Certificate).

(b) School Culture. The principal:

(1) ensures that a positive, collaborative, and collegial school culture facilitates and enhances the implementation of campus initiatives and the achievement of campus goals;

(2) uses emerging issues, recent research, demographic data, knowledge of systems, campus climate inventories, student learning data, and other information to collaboratively develop a shared campus vision;

(3) facilitates the collaborative development of a plan in which objectives and strategies to implement the campus vision are clearly articulated;

(4) supports the implementation of the campus vision by aligning financial, human, and material resources;

(5) establishes processes to assess and modify the plan of implementation to ensure achievement of the campus vision;

(6) acknowledges, recognizes, and celebrates the contributions of students, staff, parents, and community members toward the realization of the campus vision;

(7) models and promotes the continuous and appropriate development of all learners, including faculty and staff, in the campus community;

(8) uses strategies to ensure the development of collegial relationships and effective collaboration of campus staff;

(9) develops and uses effective conflict-management and consensus-building skills;

(10) establishes and communicates consistent expectations for staff and students, providing supportive feedback to ensure a positive campus environment;

(11) implements effective strategies to systematically gather input from all campus stakeholders, supporting innovative thinking and an inclusive culture;

(12) creates an atmosphere of safety that encourages the social, emotional, and physical well-being of staff and students; and

(13) ensures that parents and other members of the community are an integral part of the campus culture.

(c) Leading Learning. The principal:

(1) creates a campus culture that sets high expectations, promotes learning, and provides intellectual stimulation for self, students, and staff;

(2) prioritizes instruction and student achievement by understanding, sharing, and promoting a clear definition of high-quality instruction based on best practices from recent research;

(3) routinely monitors and improves instruction by visiting classrooms, engaging in formative, evidence-based appraisal processes and conferences with teachers, and attending grade or team meetings;

(4) facilitates the use of sound research-based practice in the development and implementation of campus curricular, co-curricular, and extracurricular programs to fulfill academic, developmental, social, and cultural needs;

(5) facilitates campus participation in collaborative school district planning, implementation, monitoring, and curriculum revision to ensure appropriate scope, sequence, content, and alignment;

(6) implements a rigorous curriculum aligned with state standards, including college and career readiness standards;

(7) analyzes the curriculum to ensure that teachers align content across grades and that curricular scopes and sequences meet the particular needs of their diverse student populations;

(8) monitors and ensures staff uses multiple forms of student data to inform instruction and intervention decisions to maximize instructional effectiveness and student achievement;

(9) ensures that effective instruction maximizes growth of individual students and student groups, supports equity, and eliminates the achievement gap;

(10) ensures staff have the capacity and time to collaboratively and individually use classroom formative and summative assessment data to inform effective instructional practices and interventions; and

(11) facilitates the use and integration of technology, telecommunications, and information systems that enhance learning.

(d) Human Capital. The principal:

(1) invests and manages time to prioritize the development, support, and supervision of the staff to enhance student outcomes;

(2) ensures all staff have clear expectations that guide them and by which they are assessed, including the use of and familiarity with evidence-based appraisal rubrics, where applicable;

(3) uses data from multiple points of the year to complete accurate appraisals of all staff, using evidence from regular observations, student data, and other sources to evaluate the effectiveness of teachers and staff;

(4) coaches and develops educators by conducting conferences, giving individualized feedback, and supporting individualized professional growth opportunities;

(5) facilitates the campus's professional learning community to review data, processes, and policies in order to improve teaching and learning in the school;

(6) creates opportunities for effective staff to take on a variety of leadership roles and appropriately delegates responsibilities to staff and administrators on the leadership team;

(7) collaboratively develops, implements, and revises a comprehensive and on-going plan for professional development of campus staff that addresses staff needs based on staff appraisal trends, goals, and student information;

(8) ensures the effective implementation of a continuum of professional development by the appropriate allocation of time, funding, and other needed resources;

(9) implements effective, legal, and appropriate strategies for the recruitment, selection, assignment, and induction of campus staff; and

(10) plans for and adopts early hiring practices.

(e) Executive Leadership. The principal:

(1) reflects on his or her practice, seeks and acts on feedback, and strives to continually improve, learn, and grow;

(2) engages in ongoing and meaningful professional growth activities to further develop knowledge and skills and to model lifelong learning;

(3) uses strong communication skills, understands how to communicate a message in different ways to meet the needs of various audiences, and develops and implements strategies for effective internal and external communications;

(4) develops and implements a comprehensive program of community relations, which uses strategies that will effectively involve and inform multiple constituencies;

(5) establishes partnerships with parents, businesses, and other groups in the community to strengthen programs and support campus goals;

(6) demonstrates awareness of social and economic issues that exist within the school and community that could impact campus operations and student learning;

(7) gathers and organizes information from a variety of sources for use in creative and effective campus decision making;

(8) frames, analyzes, and creatively resolves campus problems using effective problem-solving techniques to make timely, high-quality decisions;

(9) develops, implements, and evaluates change processes for organizational effectiveness;

(10) uses effective planning, time management, and organization of work to maximize attainment of school district and campus goals; and

(11) keeps staff inspired and focused on the campus vision while supporting effective change management.

(f) Strategic Operations. The principal:

(1) assesses current campus needs, reviewing a wide set of evidence to determine the campus's priorities, and sets ambitious and measurable school goals, targets, and strategies that form the campus's strategic plan;

(2) outlines and tracks meaningful goals, targets, and strategies aligned to a school vision that continuously improves teacher effectiveness and student outcomes;

(3) allocates resources effectively (e.g., staff time, dollars, and tools), aligning them to the school priorities and goals, and works to access additional resources as needed to support learning;

(4) establishes structures to regularly monitor multiple data points with leadership teams to evaluate progress toward goals, adjusting strategies to improve effectiveness;

(5) implements appropriate management techniques and group processes to define roles, assign functions, delegate authority, and determine accountability for campus goal attainment;

(6) implements strategies that enable the physical plant, equipment, and support systems to operate safely, efficiently, and effectively to maintain a conducive learning environment;

(7) applies local, state, and federal laws and policies to support sound decisions while considering implications related to all school operations and programs;

(8) collaboratively plans and effectively manages the campus budget;

(9) uses technology to enhance school management;

(10) facilitates the effective coordination of campus curricular, co-curricular, and extracurricular programs in relation to each other and other school district programs; and

(11) collaborates with district staff to implement district policies and advocates for the needs of district students and staff.

(g) Ethics, Equity, and Diversity. The principal:

(1) implements policies and procedures that encourage all campus personnel to comply with Chapter 247 of this title (relating to Educators' Code of Ethics);

(2) models and promotes the highest standard of conduct, ethical principles, and integrity in decision making, actions, and behaviors;

(3) ensures that reports of educator misconduct, including inappropriate relationships between educators and students, are properly reported so appropriate investigations can be conducted;

(4) models and promotes the continuous and appropriate development of all learners in the campus community;

(5) ensures all students have access to effective educators and continuous learning opportunities;

(6) promotes awareness and appreciation of diversity throughout the campus community;

(7) implements special campus programs to ensure that all students are provided quality, flexible instructional programs and services to meet individual student needs;

(8) articulates the importance of education in creating engaged citizens in a free democratic society;

(9) communicates productively with all audiences through strong communication skills and understands how to communicate a message in different ways to meet the needs of various audiences; and

(10) treats all members of the community with respect and develops strong, positive relationships with them.

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

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201601011
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Earliest possible date of adoption: April 10, 2016
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 283. LICENSING REQUIREMENTS FOR PHARMACISTS

22 TAC §§283.4, 283.7, 283.8, 283.11

The Texas State Board of Pharmacy proposes amendments to §283.4, concerning Internship Requirements, §283.7, concerning Examination Requirements, §283.8, concerning Reciprocity Requirements, and §283.11, concerning Examination Retake Requirements. The amendments to §§283.4, 283.7, and 283.8, if adopted, eliminate the provisions allowing individuals who are unable to obtain a social security number to provide an individual taxpayer identification number in lieu of a social security number because a social security number is required in order to process criminal background checks. The amendments to §283.11, if adopted, implement provisions of S.B. 460 passed during the 84th Texas Legislative session allowing applicants apply for a Texas pharmacist license who fail to achieve the minimum passing grade to retake the NAPLEX and MPJE examinations four additional times for a total of five times.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Ms. Dodson has determined that, for each year of the first five-year period the rules will be in effect, the public benefit anticipated as a result of enforcing the amendments will ensure individuals applying for a pharmacist license meet the requirements in order to conduct criminal background checks and are allowed the appropriate number of times to retake licensing examinations. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with these sections.

Written comments on the amendments may be submitted to Allison Vordenbaumen Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-6778. Comments must be received by 5 p.m., April 25, 2016.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§283.4. Internship Requirements.

(a) Goals and competency objectives of internship.

(1) The goal of internship is for the pharmacist-intern to attain the knowledge, skills, and abilities to safely, efficiently, and effectively provide pharmacist-delivered patient care to a diverse patient population and practice pharmacy under the laws and regulations of the State of Texas.

(2) The following competency objectives are necessary to accomplish the goal of internship in paragraph (1) of this subsection.

(A) Provides drug products. The pharmacist-intern shall demonstrate competence in determining the appropriateness of prescription drug orders and medication orders; evaluating and selecting products; and assuring the accuracy of the product/prescription dispensing process.

(B) Communicates with patients and/or patients' agents about prescription drugs. The pharmacist-intern shall demonstrate competence in interviewing and counseling patients, and/or the patients' agents, on drug usage, dosage, packaging, routes of administration, intended drug use, and storage; discussing drug cautions, adverse effects, and patient conditions; explaining policies on fees and services; relating to patients in a professional manner; and interacting to confirm patient understanding.

(C) Communicates with patients and/or patients' agents about nonprescription products, devices, dietary supplements, diet, nutrition, traditional nondrug therapies, complementary and alternative therapies, and diagnostic aids. The pharmacist-intern shall demonstrate competence in interviewing and counseling patients and/or patients' agents on conditions, intended drug use, and adverse effects; assisting in and recommending drug selection; triaging and assessing the need for treatment or referral, including referral for a patient seeking pharmacist-guided self-care; providing information on medical/surgical devices and home diagnostic products; and providing poison control treatment information and referral.

(D) Communicates with healthcare professionals and patients and/or patients' agents. The pharmacist-intern shall demonstrate competence in obtaining and providing accurate and concise information in a professional manner and using appropriate oral, written, and nonverbal language.

(E) Practices as a member of the patient's interdisciplinary healthcare team. The pharmacist-intern shall demonstrate competence in collaborating with physicians, other healthcare professionals, patients, and/or patients' agents to formulate a therapeutic plan. The pharmacist-intern shall demonstrate competence in establishing and interpreting data-bases, identifying drug-related problems and recommending appropriate pharmacotherapy specific to patient needs, monitoring and evaluating patient outcomes, and devising follow-up plans.

(F) Maintains professional-ethical standards. The pharmacist-intern is required to comply with laws and regulations pertaining to pharmacy practice; to apply professional judgment; to exhibit reliability and credibility in dealing with others; to deal professionally and ethically with colleagues and patients; to demonstrate sensitivity and empathy for patients/care givers; and to maintain confidentiality.

(G) Compounds. The pharmacist-intern shall demonstrate competence in using acceptable professional procedures; selecting appropriate equipment and containers; appropriately preparing compounded non-sterile and sterile preparations; and documenting calculations and procedures. Pharmacist-interns engaged in compounding non-sterile preparations shall meet the training requirements for pharmacists specified in §291.131 of this title (relating to Pharmacies Compounding Non-sterile Preparations). Pharmacist-interns engaged in compounding sterile preparations shall meet the training requirements for pharmacists specified in §291.133 of this title (relating to Pharmacies Compounding Sterile Preparations).

(H) Retrieves and evaluates drug information. The pharmacist-intern shall demonstrate competence in retrieving, evaluating, managing, and using the best available clinical and scientific publications for answering a drug-related request in a timely fashion and assessing, evaluating, and applying evidence based information to promote optimal health care. The pharmacist-intern shall perform investigations on relevant topics in order to promote inquiry and problem-solving with dissemination of findings to the healthcare community and/or the public.

(I) Manages general pharmacy operations. The pharmacist-intern shall develop a general understanding of planning, personnel and fiscal management, leadership skills, and policy development. The pharmacist-intern shall have an understanding of drug security, storage and control procedures and the regulatory requirements associated with these procedures, and maintaining quality assurance and performance improvement. The pharmacist-intern shall observe and document discrepancies and irregularities, keep accurate records and document actions. The pharmacist-intern shall attend meetings requiring pharmacy representation.

(J) Participates in public health, community service or professional activities. The pharmacist-intern shall develop basic knowledge and skills needed to become an effective healthcare educator and a responsible participant in civic and professional organizations.

(K) Demonstrates scientific inquiry. The pharmacist-intern shall develop skills to expand and/or refine knowledge in the areas of pharmaceutical and medical sciences or pharmaceutical services. This may include data analysis of scientific, clinical, sociologi-

cal, and/or economic impacts of pharmaceuticals (including investigational drugs), pharmaceutical care, and patient behaviors, with dissemination of findings to the scientific community and/or the public.

(b) Hours requirement.

(1) The board requires 1,500 hours of internship for licensure. These hours may be obtained through one or more of the following methods:

(A) in a board approved student internship program, as specified in subsection (c) of this section;

(B) in a board-approved extended-internship program as specified in subsection (d) of this section; and/or

(C) graduation from a college/school of pharmacy after July 1, 2007. Persons graduating from such programs shall be credited 1,500 hours or the number of hours actually obtained and reported by the college; and/or

(D) internship hours approved and certified to the board by another state board of pharmacy.

(2) Pharmacist-interns participating in an internship may be credited no more than 50 hours per week of internship experience.

(3) Internship hours may be used for the purpose of licensure for no longer than two years from the date the internship is completed.

(c) College-/School-Based Internship Programs.

(1) Internship experience acquired by student-interns.

(A) An individual may be designated a student-intern provided he/she:

(i) submits an application to the board that includes the following information:

(I) name;

(II) addresses, phone numbers, date of birth, and social security number; [~~however, if an individual is unable to obtain a social security number, an individual taxpayer identification number may be provided in lieu of a social security number along with documentation indicating why the individual is unable to obtain a social security number;~~]

(III) college of pharmacy and expected graduation date; and

(IV) any other information requested on the application.

(ii) is enrolled in the professional sequence of a college/school of pharmacy;

(iii) has successfully completed the first professional year and obtained a minimum of 30 credit hours of work towards a professional degree in pharmacy; and

(iv) has met all requirements necessary for the board to access the criminal history records information, including submitting fingerprint information and being responsible for all associated costs.

(B) The terms of the student internship shall be as follows.

(i) The student internship shall be gained concurrent with college attendance, which may include:

(I) partial semester breaks such as spring breaks;

(II) between semester breaks; and

(III) whole semester breaks provided the student-intern attended the college/school in the immediate preceding semester and is scheduled with the college/school to attend in the immediate subsequent semester.

(ii) The student internship shall be obtained in pharmacies licensed by the board, federal government pharmacies, or in a board-approved program.

(iii) The student internship shall be in the presence of and under the supervision of a healthcare professional preceptor or a pharmacist preceptor.

(C) None of the internship hours acquired outside of a school-based program may be substituted for any of the hours required in a college/school of pharmacy internship program.

(2) Expiration date for student-intern designation.

(A) The student-internship expires:

(i) if the student-intern voluntarily or involuntarily ceases enrollment, including suspension, in a college/school of pharmacy;

(ii) the student-intern fails either the NAPLEX or Texas Pharmacy Jurisprudence Examinations specified in this section; or

(iii) the student-intern fails to take either the NAPLEX or Texas Pharmacy Jurisprudence Examinations or both within six calendar months after graduation.

(B) The executive director of the board, in his/her discretion may extend the term of the student internship if administration of the NAPLEX or Texas Pharmacy Jurisprudence Examinations is suspended or delayed.

(3) Texas colleges/schools of pharmacy internship programs.

(A) Intern-trainees and student-interns completing a board-approved Texas college/school-based structured internship shall be credited the number of hours actually obtained and reported by the college. No credit shall be awarded for didactic experience.

(B) No more than 600 hours of the required 1,500 hours may be obtained under a healthcare professional preceptor except when a pharmacist-intern is working in a federal government pharmacy.

(C) Individuals enrolled in the professional sequence of a Texas college/school of pharmacy may be designated as a intern-trainee provided he/she:

(i) submits an application to the board that includes the following information:

(I) name;

(II) addresses, phone numbers, date of birth, and social security number; [~~however, if an individual is unable to obtain a social security number, an individual taxpayer identification number may be provided in lieu of a social security number along with documentation indicating why the individual is unable to obtain a social security number;~~]

(III) college of pharmacy and expected graduation date; and

(IV) any other information requested on the application.

(ii) is enrolled in the professional sequence of a college/school of pharmacy; and

(iii) has met all requirements necessary for the board to access the criminal history records information, including submitting fingerprint information and being responsible for all associated costs. Such internship shall remain in effect during the time the intern-trainee is enrolled in the first year of the professional sequence and shall expire upon completion of the first year of the professional sequence or upon separation from the professional sequence.

(d) Extended-internship program.

(1) A person may be designated an extended-intern provided he/she has met one of the following requirements:

(A) passed NAPLEX and the Texas Pharmacy Jurisprudence Examinations but lacks the required number of internship hours for licensure;

(B) applied to the board to take the NAPLEX and Texas Jurisprudence Examinations within six calendar months after graduation and has:

(i) graduated and received a professional degree from a college/school of pharmacy; or

(ii) completed all of the requirements for graduation and receipt of a professional degree from a college/school of pharmacy;

(C) applied to the board to take the NAPLEX and Texas Jurisprudence Examinations within six calendar months after obtaining full certification from the Foreign Pharmacy Graduate Equivalency Commission;

(D) applied to the board for re-issuance of a pharmacist license which has expired for more than two years but less than ten years and has successfully passed the Texas Pharmacy Jurisprudence Examination, but lacks the required number of hours of internship or continuing education required for licensure;

(E) is a resident in a residency program accredited by the American Society of Health-System Pharmacists in the state of Texas; or

(F) been ordered by the Board to complete an internship.

(2) In addition to meeting one of the requirements in paragraph (1) of this subsection, an applicant for an extended-internship must:

(A) submit an application to the board that includes the following information:

(i) name;

(ii) addresses, phone numbers, date of birth, and social security number; [~~however, if an individual is unable to obtain a social security number, an individual taxpayer identification number may be provided in lieu of a social security number along with documentation indicating why the individual is unable to obtain a social security number;~~]

(iii) any other information requested on the application; and

(B) meet all requirements necessary for the board to access the criminal history records information, including submitting fingerprint information and being responsible for all associated costs.

(3) The terms of the extended-internship shall be as follows.

(A) The extended-internship shall be board-approved and gained in a pharmacy licensed by the board, or a federal government pharmacy participating in a board-approved internship program.

(B) The extended-internship shall be in the presence of and under the direct supervision of a pharmacist preceptor.

(4) The extended internship remains in effect for two years. However, the internship expires immediately upon:

(A) the failure of the extended-intern to take the NAPLEX and Texas Pharmacy Jurisprudence Examinations within six calendar months after graduation or FPGEC certification;

(B) the failure of the extended-intern to pass the NAPLEX and Texas Pharmacy Jurisprudence Examinations specified in this section;

(C) upon termination of the residency program; or

(D) obtaining a Texas pharmacist license.

(5) The executive director of the board, in his/her discretion may extend the term of the extended internship if administration of the NAPLEX and/or Texas Pharmacy Jurisprudence Examinations is suspended or delayed.

(6) An applicant for licensure who has completed less than 500 hours of internship at the time of application shall complete the remainder of the 1,500 hours of internship and have the preceptor certify that the applicant has met the objectives listed in subsection (a) of this section.

(e) Pharmacist-intern identification.

(1) The board shall provide the pharmacist-intern written documentation of designation as a pharmacist-intern. This written documentation serves as identification and authorization to perform the duties of a pharmacist-intern as described in §283.5 of this title (relating to Pharmacist-Intern Duties).

(2) Pharmacist-interns shall keep this written documentation with them at all times they are serving as a pharmacist-intern and make it available for inspection by board agents.

(3) All pharmacist-interns shall wear an identification tag or badge which bears the person's name and identifies him or her as a pharmacist-intern.

(f) Change of address and/or name.

(1) Change of address. A pharmacist-intern shall notify the board electronically or in writing within 10 days of a change of address, giving the old and new address.

(2) Change of name. A pharmacist-intern shall notify the board in writing within 10 days of a change of name by:

(A) sending a copy of the official document reflecting the name change (e.g., marriage certificate, divorce decree, etc.);

(B) returning the current pharmacist-intern certificate which reflects the previous name; and

(C) paying a fee of $20.

(g) Duplicate or amended certificate. The fee for issuance of a duplicate or amended pharmacist-intern registration certificate shall be $20.

§283.7. Examination Requirements.

Each applicant for licensure by examination shall pass the Texas Pharmacy Jurisprudence Examination and the NAPLEX. The examination requirements shall be as follows:

(1) Prior to taking the required examination, the applicant shall:

(A) meet the educational and age requirements as set forth in §283.3 of this title (relating to Educational and Age Requirements);

(B) meet all requirements necessary in order for the Board to access the criminal history record information, including submitting fingerprint information and being responsible for all associated costs; and

(C) submit an application to the board that includes the following information:

(i) name;

(ii) addresses, phone numbers, date of birth, and social security number; [~~however, if an individual is unable to obtain a social security number, an individual taxpayer identification number may be provided in lieu of a social security number along with documentation indicating why the individual is unable to obtain a social security number;~~] and

(iii) any other information requested on the application.

(2) All applicants shall pass NAPLEX, which includes, at a minimum, the following subject areas:

(A) chemistry;

(B) mathematics;

(C) pharmacy;

(D) pharmacology; and

(E) practice of pharmacy.

(3) Effective October 1, 1979, the following requirements apply.

(A) To pass NAPLEX, an applicant shall make the following grades:

(i) a minimum grade of 60 on chemistry, mathematics, pharmacy, and pharmacology test;

(ii) a minimum grade of 75 on the practice of pharmacy test; and

(iii) a minimum average grade of 75 on the NAPLEX.

(B) Should the applicant fail to achieve a minimum grade of 60 in any of the tests set out in paragraph (2)(A) - (E) of this section or fail to achieve a minimum grade of 75 in the practice of pharmacy test or fail to achieve a minimum average grade of 75 in the NAPLEX, such applicant, in order to be licensed, is required to retake all tests until such time as the minimum average grades are achieved.

(4) Effective June 1, 1986, the following requirements apply.

(A) To pass the NAPLEX, an applicant shall make a minimum average grade of 75.

(B) Should the applicant fail to achieve a minimum average grade of 75 in the NAPLEX, such applicant, in order to be licensed, shall retake the NAPLEX, as specified in §283.11 of this title (relating to Examination Retake Requirements) until such time as a minimum average grade of 75 is achieved.

(5) To pass the Texas Pharmacy Jurisprudence Examination, an applicant shall make a minimum grade of 75. Should the applicant fail to achieve a minimum grade of 75 on the Texas Pharmacy Jurisprudence Examination, such applicant, in order to be licensed, shall retake the Texas Pharmacy Jurisprudence Examination as specified in §283.11 of this title until such time as a minimum average grade of 75 is achieved.

(6) A passing grade on an examination may be used for the purpose of licensure for a period of two years from the date of passing the examination.

(7) Each applicant for licensure by examination utilizing NAPLEX scores transferred from another state shall meet the following requirements for licensure in addition to the requirements set out in paragraphs (1) - (6) of this section.

(A) The applicant shall request NABP to transfer NAPLEX scores to the board. Such request shall be in accordance with NABP policy.

(B) The applicant shall pay the fee set out in §283.9 of this title.

(8) The NAPLEX and Texas Pharmacy Jurisprudence Examination shall be administered in compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.) and in accordance with NABP policy.

(9) The board, in accordance with NABP policy, shall provide reasonable accommodations for an applicant diagnosed as having dyslexia, as defined in §51.970, Texas Education Code. The applicant shall provide:

(A) written documentation from a licensed physician which indicates that the applicant has been diagnosed as having dyslexia; and

(B) a written request outlining the reasonable accommodations requested.

§283.8. Reciprocity Requirements.

(a) All applicants for licensure by reciprocity shall:

(1) meet the educational and age requirements specified in §283.3 of this title (relating to Educational and Age Requirements);

(2) meet all requirements necessary in order for the board to access the criminal history record information, including submitting fingerprint information and being responsible for all associated costs;

(3) complete the Texas and NABP applications for reciprocity. Any fraudulent statement made in the application for reciprocity is grounds for denial of the application; if such application is granted, any fraudulent statement is grounds for suspension, revocation, and/or cancellation of any license so granted by the board. The Texas application includes the following information:

(A) name;

(B) addresses, phone numbers, dates of birth, and social security numbers; [~~however, if an individual is unable to obtain a social security number, an individual taxpayer identification number may be provided in lieu of a social security number along with documentation indicating why the individual is unable to obtain a social security number;~~] and

(C) any other information requested on the application.

(4) shall present to the board proof of initial licensing by examination and proof that their current license and any other license or licenses granted to the applicant by any other state have not been

suspended, revoked, canceled, surrendered, or otherwise restricted for any reason; and

(5) shall pass the Texas Pharmacy Jurisprudence Examination with a minimum grade of 75. (The passing grade may be used for the purpose of licensure by reciprocity for a period of two years from the date of passing the examination.) Should the applicant fail to achieve a minimum grade of 75 on the Texas Pharmacy Jurisprudence Examination, such applicant, in order to be licensed, shall retake the Texas Pharmacy Jurisprudence Examination as specified in §283.11 of this title (relating to Examination Retake Requirements) until such time as a minimum grade of 75 is achieved.

(b) A reciprocity applicant originally licensed after January 1, 1978, and who has graduated and received a professional degree from a college of pharmacy, shall show proof such applicant has passed the NAPLEX or equivalent examination based on criteria no less stringent than the criteria in force in Texas.

(c) A reciprocity applicant who is a foreign pharmacy graduate shall provide written documentation that such applicant has:

(1) obtained full certification from the FPGEC; and

(2) passed NAPLEX or equivalent examination based on criteria no less stringent than the criteria in force in Texas.

(d) An applicant is not eligible for licensing by reciprocity unless the state in which the applicant is currently or was initially licensed as a pharmacist also grants reciprocal licensing to pharmacists duly licensed by examination in this state, under like circumstances and conditions.

§283.11. Examination Retake Requirements.

(a) Licensing by examination. Should an applicant fail to achieve the minimum grade on the NAPLEX or Texas Pharmacy Jurisprudence Examination or both, the following is applicable.

(1) If the applicant fails to achieve the minimum grade on NAPLEX as specified in §283.7 of this title (relating to Examination Requirements), the applicant may retake NAPLEX four [~~two~~] additional times for a total of five [~~three~~] exam administrations. Prior to any subsequent retakes of NAPLEX, the applicant must:

(A) request in writing an analysis of the applicant's performance on the most recent NAPLEX and provide this analysis to the Examination Retake Committee;

(B) complete college course work in subject areas recommended by the Examination Retake Committee;

(C) submit documentation from the Examination Retake Committee which specifies that the applicant has successfully completed the course work specified; and

(D) comply with the requirements of §283.7 of this title (relating to Examination Requirements).

(2) If the applicant fails to achieve the minimum grade on the Texas Pharmacy Jurisprudence Examination as specified in §283.7 of this title (relating to Examination Requirements), the applicant may retake the examination four [~~two~~] additional times for a total of five [~~three~~] exam administrations. Prior to any subsequent retake of the Texas Pharmacy Jurisprudence Examination, the applicant must:

(A) request in writing an analysis of the applicant's performance on the most recent Texas Pharmacy Jurisprudence Examination and provide this analysis to the Examination Retake Committee;

(B) complete college course work recommended by the Examination Retake Committee;

(C) submit documentation from the Examination Retake Committee which specifies that the applicant has successfully completed the recommended college course work; and

(D) comply with the requirements of §283.7 of this title (relating to Examination Requirements).

(3) If the applicant fails to achieve the minimum grade on both NAPLEX and the Texas Pharmacy Jurisprudence Examination, the applicant shall retake the examinations until a passing grade is achieved on one of the examinations. Such retakes shall be as specified in paragraphs (1) and (2) of this subsection.

(b) Licensing by reciprocity. If an applicant fails to achieve the minimum grade on the Texas Pharmacy Jurisprudence Examination as specified in §283.8 of this title (relating to Reciprocity Requirements), the applicant may retake the examination four [~~two~~] additional times for a total of five [~~three~~] exam administrations. Prior to any subsequent retake of the Texas Pharmacy Jurisprudence Examination, the applicant must:

(1) request in writing an analysis of the applicant's performance on the most recent Texas Pharmacy Jurisprudence Examination and provide this analysis to the Examination Retake Committee;

(2) complete college course work recommended by the Examination Retake Committee;

(3) submit documentation from the Examination Retake Committee which specifies that the applicant has successfully completed the recommended college course work; and

(4) comply with the requirements of §283.8 of this title (relating to Reciprocity Requirements).

(c) Examination Retake Committee. The board shall appoint one representative from each Texas college/school of pharmacy and one current board member to serve on the Examination Retake Committee. The Examination Retake Committee shall:

(1) meet as necessary but no more than twice each calendar year;

(2) review the analysis of an applicant's performance on failed examination(s);

(3) recommend college course work which the applicant must successfully complete before the applicant may retake the examination(s);

(4) specify the requirements for completion of the recommended college course work and the documentation required to validate successful completion of the recommended college course work; and

(5) once the applicant has met the requirements set out by the committee, certify to the board that the applicant has successfully completed the required college course work.

(d) College course work. For the purpose of this subsection, college course work shall be:

(1) one or more standard courses or self-paced work offered in a college of pharmacy's academic program; or

(2) one or more courses presented by a board-approved provider of continuing pharmacy education as specified in §295.8 of this title (relating to Continuing Education Requirements); or

(3) any course specified by the Examination Retake Committee.

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

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Gay Dodson, R. Ph.
Executive Director
Texas State Board of Pharmacy
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For further information, please call: (512) 305-8026

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CHAPTER 291. PHARMACIES
SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.5, §291.14

The Texas State Board of Pharmacy proposes amendments to §291.5, concerning Closing a Pharmacy, and §291.14, concerning Pharmacy License Renewal. The amendments to §291.5 if adopted, clarify the requirements for closing a pharmacy and eliminate the requirements for a pharmacy to transfer records to a pharmacy within a reasonable distance. The amendments to §291.14, if adopted, implement provisions of S.B. 460 passed during the 84th Texas Legislative session which change the expiration date for a pharmacy license that has expired from one year to 91 days and allows the board to not renew the license of a pharmacy if the board determines that the pharmacy is not located or no longer exists at the pharmacy's address of record.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Ms. Dodson has determined that, for each year of the first five-year period the rules will be in effect, the public benefit anticipated as a result of enforcing the amendments to §291.5 will ensure that pharmacies that close provide adequate notice and the public benefit anticipated as a result of enforcing the amendments to §291.14 will ensure that pharmacies no longer operating are not renewed and are closed in a reasonable time. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with these sections.

Written comments on the amendments may be submitted to Allison Vordenbaumen Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-6778. Comments must be received by 5 p.m., April 25, 2016.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.5. Closing a Pharmacy.

(a) Prior to closing. At least 14 days prior to the closing of a pharmacy that dispenses prescription drug orders, the pharmacist-in-charge shall post a closing notice sign in a conspicuous place in the front of the prescription department and at all public entrance doors to the pharmacy. Such closing notice sign shall contain the following information: [~~comply with the following.~~]

(1) the date of closing; and [~~if the pharmacy is registered to possess controlled substances, send a written notification to the appropriate divisional office of the Drug Enforcement Administration (DEA) containing the following information:~~]

[~~(A) the name, address, and DEA registration number of the pharmacy;~~]

[~~(B) the anticipated date of closing;~~]

[~~(C) the name, address, and DEA registration number of the pharmacy acquiring the controlled substances; and~~]

[~~(D) the date on which the transfer of controlled substances will occur.~~]

(2) [~~If the pharmacy dispenses prescription drug orders, post a closing notice sign in a conspicuous place in the front of the prescription department and at all public entrance doors to the pharmacy. Such closing notice sign shall contain the following information:~~]

[~~(A) the date of closing; and~~]

[~~(B)~~] the name, address, and telephone number of the pharmacy acquiring the prescription drug orders, including refill information and patient medication records of the pharmacy.

(b) Closing day. On the date of closing, the pharmacist-in-charge shall comply with the following:

(1) take an inventory as specified in §291.17 of this title (relating to Inventory Requirements);

(2) remove all prescription drugs from the pharmacy by one or a combination of the following methods:

(A) return prescription drugs to manufacturer or supplier (for credit/disposal);

(B) transfer (sell or give away) prescription drugs to a person who is legally entitled to possess drugs, such as a hospital, or another pharmacy; and

(C) destroy the prescription drugs following procedures specified in §303.2 of this title (relating to Disposal of Stock Prescription Drugs);

(3) if the pharmacy dispenses prescription drug orders:

(A) transfer the prescription drug order files, including refill information, and patient medication records to a licensed pharmacy [~~within a reasonable distance of the closing pharmacy~~]; and

(B) remove [~~move~~] all signs or notify the landlord or owner of the property that it is unlawful to use the word "pharmacy" either in English or any other language, or any other word or combination of words of the same or similar meaning, or any graphic representation that would mislead or tend to mislead the public that a pharmacy is located at the address.

(c) After closing.

(1) Within ten days after the closing of the pharmacy, the pharmacist-in-charge shall forward to the board a written notice of the closing which includes the following information:

(A) the actual date of closing;

(B) the license issued to the pharmacy;

(C) a statement attesting:

(i) that an inventory as specified in §291.17 of this title (relating to Inventory Requirements) has been conducted; and

(ii) the manner by which the dangerous drugs and controlled substances possessed by the pharmacy were transferred or disposed; and

(D) if the pharmacy dispenses prescription drug orders, the name and address of the pharmacy to which the prescription drug orders, including refill information, and patient medication records were transferred.

(2) If the pharmacy is registered to possess controlled substances, send notification [~~a letter~~] to the[~~:~~]

[~~(A)~~] appropriate DEA divisional office explaining that the pharmacy has closed and include[~~. Include~~] the following items [~~with the letter~~]:

(A) [~~(i)~~] DEA registration certificate; and

(B) [~~(ii)~~] all unused DEA order forms (222) with the word VOID written on the face of each order form[~~; and~~]

~~*[(iii)* copy 2 of any DEA order forms (222) used to transfer Schedule II controlled from the closed pharmacy].~~

~~[(B) the Texas Department of Public Safety (DPS) explaining that the pharmacy has closed and include the DPS registration certificate.]~~

(3) Once the pharmacy has notified the board that the pharmacy is closed, the license may not be renewed. The pharmacy may apply for a new license as specified in §291.1 of this title (relating to Pharmacy License Application).

(d) Emergency closing. If pharmacy is closed suddenly due to fire, destruction, natural disaster, death, property seizure, eviction, bankruptcy, or other emergency circumstances and the pharmacist-in-charge cannot provide notification 14 days prior to the closing, the pharmacist-in-charge shall comply with the provisions of subsection (a) of this section as far in advance of the closing as allowed by the circumstances.

(e) Joint responsibility. If the pharmacist-in-charge is not available to comply with the requirements of this section, the owner shall be responsible for compliance with the provisions of this section.

§291.14. Pharmacy License Renewal.

(a) Renewal requirements.

(1) A license to operate a pharmacy expires on the last day of the assigned expiration month.

~~[(2) Timely receipt of the completed application and renewal fee means the receipt in the board's office of such application and renewal fee.]~~

(2) [~~(3)~~] The provision of the Act, §561.005, shall apply if the completed application and a renewal fee is not received in the board's office on or before the last day of the assigned expiration month.

(3) [~~(4)~~] An expired license may be renewed according to the following schedule:

(A) If the license has been expired for 90 days or less, the license may be renewed by paying to the board a renewal fee that is equal to one and one-half times the required renewal fee as specified in §291.6 of this title (relating to Pharmacy License Fees).

~~[(B) If the license has been expired for more than 90 days but less than one year, the license may be renewed by paying to the board a renewal fee that is equal to two times the required renewal fee as specified in §291.6 of this title.]~~

(B) [~~(C)~~] If the license has been expired for 91 days [~~one year~~] or more, the license may not be renewed. The pharmacy may apply for a new license as specified in §291.1 of this title (relating to Pharmacy License Application).

(b) If the board determines on inspection at the pharmacy's address on or after the expiration date of the license that no pharmacy is located or exists at the pharmacy's address (e.g., the building is vacated or for sale or lease, or another business is operating at the location), the board shall not renew the license.

(c) [~~(b)~~] Additional renewal requirements for Class E pharmacies. In addition to the renewal requirements in subsection (a) of this section, a Class E pharmacy shall have on file with the Board an inspection report issued:

(1) not more than three years before the date the renewal application is received; and

(2) by the pharmacy licensing board in the state of the pharmacy's physical location except as provided in §291.104 of this title (relating to Operational Standards).

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

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SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

22 TAC §291.34

The Texas State Board of Pharmacy proposes amendments to §291.34, concerning Records. The amendments, if adopted, clarify that prescriptions must be transferred within four business hours; clarify the requirements regarding identification records for individuals involved in dispensing; and implement provisions of HB 751 regarding interchangeable biological products.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments to §291.5 will ensure that pharmacies provide transfer information in a timely manner; ensure that records of individuals involved in dispens-

ing are accurate; and ensure prescription drug order information for interchangeable biological products is maintained. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section.

Written comments on the amendments may be submitted to Allison Vordenbaumen Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-6778. Comments must be received by 5 p.m., April 25, 2016.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.34. Records.

(a) (No change.)

(b) Prescriptions.

(1) - (6) (No change.)

(7) Prescription drug order information.

(A) (No change.)

(B) At the time of dispensing, a pharmacist is responsible for documenting the following information on either the original hard copy prescription or in the pharmacy's data processing system:

(i) unique identification number of the prescription drug order;

(ii) initials or identification code of the dispensing pharmacist;

(iii) initials or identification code of the pharmacy technician or pharmacy technician trainee performing data entry of the prescription, if applicable;

(iv) quantity dispensed, if different from the quantity prescribed;

(v) date of dispensing, if different from the date of issuance; and

(vi) brand name or manufacturer of the drug or biological product actually dispensed, if the drug was prescribed by generic name or interchangeable biological name or if a drug or interchangeable biological product other than the one prescribed was dispensed pursuant to the provisions of the Act, Chapters 562 and 563.

(8) - (10) (No change.)

(c) - (f) (No change.)

(g) Transfer of prescription drug order information. For the purpose of initial or refill dispensing, the transfer of original prescription drug order information is permissible between pharmacies, subject to the following requirements.

(1) The transfer of original prescription drug order information for controlled substances listed in Schedule III, IV, or V is permissible between pharmacies on a one-time basis only. However, pharmacies electronically sharing a real-time, on-line database may transfer up to the maximum refills permitted by law and the prescriber's authorization.

(2) The transfer of original prescription drug order information for dangerous drugs is permissible between pharmacies without limitation up to the number of originally authorized refills.

(3) The transfer is communicated orally by telephone or via facsimile directly by a pharmacist to another pharmacist; by a pharmacist to a student-intern, extended-intern, or resident-intern; or by a student-intern, extended-intern, or resident-intern to another pharmacist.

(4) Both the original and the transferred prescription drug orders are maintained for a period of two years from the date of last refill.

(5) The individual transferring the prescription drug order information shall ensure the following occurs:

(A) write the word "void" on the face of the invalidated prescription or the prescription is voided in the data processing system;

(B) record the name, address, if for a controlled substance, the DEA registration number of the pharmacy to which it was transferred, and the name of the receiving individual on the reverse of the invalidated prescription or stored with the invalidated prescription drug order in the data processing system;

(C) record the date of the transfer and the name of the individual transferring the information; and

(D) if the prescription is transferred electronically, provide the following information:

(i) date of original dispensing and prescription number;

(ii) number of refills remaining and if a controlled substance, the date(s) and location(s) of previous refills;

(iii) name, address, and if a controlled substance, the DEA registration number of the transferring pharmacy;

(iv) name of the individual transferring the prescription; and

(v) if a controlled substance, name, address and DEA registration number, and prescription number from the pharmacy that originally dispensed the prescription, if different.

(6) The individual receiving the transferred prescription drug order information shall:

(A) write the word "transfer" on the face of the prescription or the prescription record indicates the prescription was a transfer; and

(B) reduce to writing all of the information required to be on a prescription as specified in subsection (b)(7) of this section (relating to Prescriptions) and including the following information;

(i) date of issuance and prescription number;

(ii) original number of refills authorized on the original prescription drug order;

(iii) date of original dispensing;

(iv) number of valid refills remaining and if a controlled substance, date(s) and location(s) of previous refills;

(v) name, address, and if for a controlled substance, the DEA registration number of the transferring pharmacy;

(vi) name of the individual transferring the prescription; and

(vii) name, address, and if for a controlled substance, the DEA registration number, of the pharmacy that originally dispensed the prescription, if different; or

(C) if the prescription is transferred electronically, create an electronic record for the prescription that includes the receiving pharmacist's name and all of the information transferred with the prescription including all of the information required to be on a prescription as specified in subsection (b)(7) of this section (relating to Prescriptions) and the following:

(i) date of original dispensing;

(ii) number of refills remaining and if a controlled substance, the prescription number(s), date(s) and location(s) of previous refills;

(iii) name, address, and if for a controlled substance, the DEA registration number;

(iv) name of the individual transferring the prescription; and

(v) name, address, and if for a controlled substance, the DEA registration number, of the pharmacy that originally filled the prescription.

(7) Both the individual transferring the prescription and the individual receiving the prescription must engage in confirmation of the prescription information by such means as:

(A) the transferring individual faxes the hard copy prescription to the receiving individual; or

(B) the receiving individual repeats the verbal information from the transferring individual and the transferring individual verbally confirms that the repeated information is correct.

(8) Pharmacies transferring prescriptions electronically shall comply with the following:

(A) Prescription drug orders may not be transferred by non-electronic means during periods of downtime except on consultation with and authorization by a prescribing practitioner; provided however, during downtime, a hard copy of a prescription drug order may be made available for informational purposes only, to the patient or a pharmacist, and the prescription may be read to a pharmacist by telephone.

(B) The original prescription drug order shall be invalidated in the data processing system for purposes of filling or refilling, but shall be maintained in the data processing system for refill history purposes.

(C) If the data processing system does not have the capacity to store all the information as specified in paragraphs (5) and (6) of this subsection, the pharmacist is required to record this information on the original or transferred prescription drug order.

(D) The data processing system shall have a mechanism to prohibit the transfer or refilling of controlled substance prescription drug orders that have been previously transferred.

(E) Pharmacies electronically accessing the same prescription drug order records may electronically transfer prescription information if the following requirements are met.

(i) The original prescription is voided and the pharmacies' data processing systems shall store all the information as specified in paragraphs (5) and (6) of this subsection.

(ii) Pharmacies not owned by the same entity [~~person~~] may electronically access the same prescription drug order records, provided the owner, chief executive officer, or designee of each pharmacy signs an agreement allowing access to such prescription drug order records.

(iii) An electronic transfer between pharmacies may be initiated by a pharmacist intern, pharmacy technician, or pharmacy technician trainee acting under the direct supervision of a pharmacist.

(9) An individual may not refuse to transfer original prescription information to another individual who is acting on behalf of a patient and who is making a request for this information as specified in this subsection. The transfer of original prescription information must be completed within four business hours of the request. [~~done in a timely manner.~~]

(10) When transferring a compounded prescription, a pharmacy is required to provide all of the information regarding the compounded preparation including the formula unless the formula is patented or otherwise protected, in which case, the transferring pharmacy shall, at a minimum, provide the quantity or strength of all of the active ingredients of the compounded preparation.

(11) [~~(10)~~] The electronic transfer of multiple or bulk prescription records between two pharmacies is permitted provided:

(A) a record of the transfer as specified in paragraph (5) of this subsection [~~section~~] is maintained by the transferring pharmacy;

(B) the information specified in paragraph (6) of this subsection is maintained by the receiving pharmacy; and

(C) in the event that the patient or patient's agent is unaware of the transfer of the prescription drug order record, the transferring pharmacy must notify the patient or patient's agent of the transfer and must provide the patient or patient's agent with the telephone number of the pharmacy receiving the multiple or bulk prescription drug order records.

(h) (No change.)

(i) Other records. Other records to be maintained by a pharmacy:

(1) a [~~permanent~~] log of the initials or identification codes that will identify each pharmacist, pharmacy technician, and pharmacy technician trainee, who is involved in the dispensing process, in the pharmacy's data processing system, [~~by name performing data entry of prescription information~~] (the initials or identification code shall be unique to ensure that each individual can be identified, i.e., identical initials or identification codes shall not be used). Such log shall be maintained at the pharmacy for at least seven years from the date of the transaction;

(2) Copy 3 of DEA order form (DEA 222) that has been properly dated, initialed, and filed, and all copies of each unaccepted or defective order form and any attached statements or other documents and/or for each order filled using the DEA Controlled Substance Ordering System (CSOS) the original signed order and all linked records for that order;

(3) a [~~hard~~] copy of the power of attorney to sign DEA 222 order forms (if applicable);

(4) suppliers' invoices of dangerous drugs and controlled substances; a pharmacist shall verify that the controlled drugs listed on the invoices were actually received by clearly recording his/her initials and the actual date of receipt of the controlled substances;

(5) suppliers' credit memos for controlled substances and dangerous drugs;

(6) a [~~hard~~] copy of inventories required by §291.17 of this title (relating to Inventory Requirements);

(7) [~~hard copy~~] reports of surrender or destruction of controlled substances and/or dangerous drugs to an appropriate state or federal agency;

(8) [~~a hard copy of~~] the Schedule V nonprescription register book;

(9) records of distribution of controlled substances and/or dangerous drugs to other pharmacies, practitioners, or registrants; and

(10) a [~~hard~~] copy of any notification required by the Texas Pharmacy Act or the sections in this chapter, including, but not limited to, the following:

(A) reports of theft or significant loss of controlled substances to DEA, Department of Public Safety, and the board;

(B) notifications of a change in pharmacist-in-charge of a pharmacy; and

(C) reports of a fire or other disaster that may affect the strength, purity, or labeling of drugs, medications, devices, or other materials used in the diagnosis or treatment of injury, illness, and disease

(j) - (l) (No change.)

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

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Gay Dodson, R.Ph.
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SUBCHAPTER G. SERVICES PROVIDED BY PHARMACIES

22 TAC §291.133

The Texas State Board of Pharmacy proposes amendments to §291.133, concerning Pharmacies Compounding Sterile Preparations. The proposed amendments, if adopted, remove references to training requirements that are no longer necessary; update the requirements for sterility testing and temperature and humidity to be consistent with USP 797; clarify the requirements regarding blood labeling to specify that blood labeling occurs in a buffer area; and clarify recordkeeping requirements.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will ensure pharmacies are compounding sterile preparations under appropriate conditions. There might be an adverse economic effect on micro, small, and large businesses or to other entities/persons who are required to comply with the rules for pharmacies compounding sterile preparations. Based on the significant variances in pharmacies' physical structure and layout, it is difficult for TSBP to determine the actual cost to businesses required to comply with this rule. These costs would involve bringing the sterile compounding area of pharmacies into compliance with the new provisions of the rules. In addition, TSBP is unable to reduce these costs because to do so would compromise the purposes of this rule which is intended to protect the health and safety of the public.

Written comments on the amendments may be submitted to Allison Vordenbaumen Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-6778. Comments must be received by 5 p.m., April 25, 2016.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.133. Pharmacies Compounding Sterile Preparations.

(a) Purpose. Pharmacies compounding sterile preparations, prepackaging pharmaceutical products, and distributing those products shall comply with all requirements for their specific license classification and this section. The purpose of this section is to provide standards for the:

(1) compounding of sterile preparations pursuant to a prescription or medication order for a patient from a practitioner in Class A-S, Class B, Class C-S, and Class E-S pharmacies;

(2) compounding, dispensing, and delivery of a reasonable quantity of a compounded sterile preparation in Class A-S, Class B, Class C-S, and Class E-S pharmacies to a practitioner's office for office use by the practitioner;

(3) compounding and distribution of compounded sterile preparations by a Class A-S pharmacy for a Class C-S pharmacy; and

(4) compounding of sterile preparations by a Class C-S pharmacy and the distribution of the compounded preparations to other Class C or Class C-S pharmacies under common ownership.

(b) Definitions. In addition to the definitions for specific license classifications, the following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) ACPE--Accreditation Council for Pharmacy Education.

(2) Airborne particulate cleanliness class--The level of cleanliness specified by the maximum allowable number of particles per cubic meter of air as specified in the International Organization of Standardization (ISO) Classification Air Cleanliness (ISO 14644-1). For example:

(A) ISO Class 5 (formerly Class 100) is an atmospheric environment that contains less than 3,520 particles 0.5 microns in diameter per cubic meter of air (formerly stated as 100 particles 0.5 microns in diameter per cubic foot of air);

(B) ISO Class 7 (formerly Class 10,000) is an atmospheric environment that contains less than 352,000 particles 0.5 microns in diameter per cubic meter of air (formerly stated as 10,000 particles 0.5 microns in diameter per cubic foot of air); and

(C) ISO Class 8 (formerly Class 100,000) is an atmospheric environment that contains less than 3,520,000 particles 0.5 microns in diameter per cubic meter of air (formerly stated as 100,000 particles 0.5 microns in diameter per cubic foot of air).

(3) Ancillary supplies--Supplies necessary for the preparation and administration of compounded sterile preparations.

(4) Ante-area--An ISO Class 8 or better area where personnel may perform hand hygiene and garbing procedures, staging of components, order entry, labeling, and other high-particulate generating activities. It is also a transition area that:

(A) provides assurance that pressure relationships are constantly maintained so that air flows from clean to dirty areas; and

(B) reduces the need for the heating, ventilating and air conditioning (HVAC) control system to respond to large disturbances.

(5) Aseptic Processing--A mode of processing pharmaceutical and medical preparations that involves the separate sterilization of the preparation and of the package (containers-closures or packaging material for medical devices) and the transfer of the preparation into the container and its closure under at least ISO Class 5 conditions.

(6) Automated compounding device--An automated device that compounds, measures, and/or packages a specified quantity of individual components in a predetermined sequence for a designated sterile preparation.

(7) Batch--A specific quantity of a drug or other material that is intended to have uniform character and quality, within specified limits, and is produced during a single preparation cycle.

(8) Batch preparation compounding--Compounding of multiple sterile preparation units, in a single discrete process, by the same individual(s), carried out during one limited time period. Batch preparation/compounding does not include the preparation of multiple sterile preparation units pursuant to patient specific medication orders.

(9) Beyond-use date--The date or time after which the compounded sterile preparation shall not be stored or transported or begin to be administered to a patient. The beyond-use date is determined from the date or time the preparation is compounded.

(10) Biological Safety Cabinet, Class II--A ventilated cabinet for personnel, product or preparation, and environmental protection having an open front with inward airflow for personnel protection, downward HEPA filtered laminar airflow for product protection, and HEPA filtered exhausted air for environmental protection.

(11) Buffer Area--An ISO Class 7 or, if a Class B pharmacy, ISO Class 8 or better, area where the primary engineering control area is physically located. Activities that occur in this area include the preparation and staging of components and supplies used when compounding sterile preparations.

(12) Clean room--A room in which the concentration of airborne particles is controlled to meet a specified airborne particulate cleanliness class. Microorganisms in the environment are monitored so that a microbial level for air, surface, and personnel gear are not exceeded for a specified cleanliness class.

(13) Component--Any ingredient intended for use in the compounding of a drug preparation, including those that may not appear in such preparation.

(14) Compounding--The preparation, mixing, assembling, packaging, or labeling of a drug or device:

(A) as the result of a practitioner's prescription drug or medication order based on the practitioner-patient-pharmacist relationship in the course of professional practice;

(B) for administration to a patient by a practitioner as the result of a practitioner's initiative based on the practitioner-patient-pharmacist relationship in the course of professional practice;

(C) in anticipation of prescription drug or medication orders based on routine, regularly observed prescribing patterns; or

(D) for or as an incident to research, teaching, or chemical analysis and not for sale or dispensing, except as allowed under §562.154 or Chapter 563 of the Occupations Code.

(15) Compounding Aseptic Isolator--A form of barrier isolator specifically designed for compounding pharmaceutical ingredients or preparations. It is designed to maintain an aseptic compounding environment within the isolator throughout the compounding and material transfer processes. Air exchange into the isolator from the surrounding environment shall not occur unless it has first passed through a microbial retentive filter (HEPA minimum).

(16) Compounding Aseptic Containment Isolator--A compounding aseptic isolator designed to provide worker protection from exposure to undesirable levels of airborne drug throughout the compounding and material transfer processes and to provide an aseptic environment for compounding sterile preparations. Air exchange with the surrounding environment should not occur unless the air is first passed through a microbial retentive filter (HEPA minimum) system capable of containing airborne concentrations of the physical size and state of the drug being compounded. Where volatile hazardous drugs are prepared, the exhaust air from the isolator should be appropriately removed by properly designed building ventilation.

(17) Compounding Personnel--A pharmacist, pharmacy technician, or pharmacy technician trainee who performs the actual compounding; a pharmacist who supervises pharmacy technicians or pharmacy technician trainees compounding sterile preparations, and a pharmacist who performs an intermediate or final verification of a compounded sterile preparation.

(18) Critical Area--An ISO Class 5 environment.

(19) Critical Sites--A location that includes any component or fluid pathway surfaces (e.g., vial septa, injection ports, beakers) or openings (e.g., opened ampules, needle hubs) exposed and at risk of direct contact with air (e.g., ambient room or HEPA filtered), moisture (e.g., oral and mucosal secretions), or touch contamination. Risk of microbial particulate contamination of the critical site increases with the size of the openings and exposure time.

(20) Device--An instrument, apparatus, implement, machine, contrivance, implant, in-vitro reagent, or other similar or related article, including any component part or accessory, that is required under federal or state law to be ordered or prescribed by a practitioner.

(21) Direct Compounding Area--A critical area within the ISO Class 5 primary engineering control where critical sites are exposed to unidirectional HEPA-filtered air, also known as first air.

(22) Disinfectant--An agent that frees from infection, usually a chemical agent but sometimes a physical one, and that destroys disease-causing pathogens or other harmful microorganisms but may not kill bacterial and fungal spores. It refers to substances applied to inanimate objects.

(23) First Air--The air exiting the HEPA filter in a unidirectional air stream that is essentially particle free.

(24) Hazardous Drugs--Drugs that, studies in animals or humans indicate exposure to the drugs, have a potential for causing cancer, development or reproductive toxicity, or harm to organs. For the purposes of this chapter, radiopharmaceuticals are not considered hazardous drugs.

(25) Hot water--The temperature of water from the pharmacy's sink maintained at a minimum of 105 degrees F (41 degrees C).

(26) HVAC--Heating, ventilation, and air conditioning.

(27) Immediate use--A sterile preparation that is not prepared according to USP 797 standards (i.e., outside the pharmacy and most likely not by pharmacy personnel) which shall be stored for no longer than one hour after completion of the preparation.

(28) IPA--Isopropyl alcohol (2-propanol).

(29) Labeling--All labels and other written, printed, or graphic matter on an immediate container of an article or preparation or on, or in, any package or wrapper in which it is enclosed, except any outer shipping container. The term "label" designates that part of the labeling on the immediate container.

(30) Media-Fill Test--A test used to qualify aseptic technique of compounding personnel or processes and to ensure that the processes used are able to produce sterile preparation without microbial contamination. During this test, a microbiological growth medium such as Soybean-Casein Digest Medium is substituted for the actual drug preparation to simulate admixture compounding. The issues to consider in the development of a media-fill test are the following: media-fill procedures, media selection, fill volume, incubation, time and temperature, inspection of filled units, documentation, interpretation of results, and possible corrective actions required.

(31) Multiple-Dose Container--A multiple-unit container for articles or preparations intended for potential administration only and usually contains antimicrobial preservatives. The beyond-use date for an opened or entered (e.g., needle-punctured) multiple-dose container with antimicrobial preservatives is 28 days, unless otherwise specified by the manufacturer.

(32) Negative Pressure Room--A room that is at a lower pressure compared to adjacent spaces and, therefore, the net flow of air is into the room.

(33) Office use--The administration of a compounded drug to a patient by a practitioner in the practitioner's office or by the practitioner in a health care facility or treatment setting, including a hospital, ambulatory surgical center, or pharmacy in accordance with Chapter 562 of the Act, or for administration or provision by a veterinarian in accordance with §563.054 of the Act.

(34) Pharmacy Bulk Package--A container of a sterile preparation for potential use that contains many single doses. The contents are intended for use in a pharmacy admixture program and are restricted to the preparation of admixtures for infusion or, through a sterile transfer device, for the filling of empty sterile syringes. The closure shall be penetrated only one time after constitution with a suitable sterile transfer device or dispensing set, which allows measured dispensing of the contents. The pharmacy bulk package is to be used only in a suitable work area such as a laminar flow hood (or an equivalent clean air compounding area).

(35) Prepackaging--The act of repackaging and relabeling quantities of drug products from a manufacturer's original container into unit dose packaging or a multiple dose container for distribution within a facility licensed as a Class C pharmacy or to other pharmacies under common ownership for distribution within those facilities. The term as defined does not prohibit the prepackaging of drug products for use within other pharmacy classes.

(36) Preparation or Compounded Sterile Preparation--A sterile admixture compounded in a licensed pharmacy or other healthcare-related facility pursuant to the order of a licensed prescriber. The components of the preparation may or may not be sterile products.

(37) Primary Engineering Control--A device or room that provides an ISO Class 5 environment for the exposure of critical sites when compounding sterile preparations. Such devices include, but may not be limited to, laminar airflow workbenches, biological safety cabinets, compounding aseptic isolators, and compounding aseptic containment isolators.

(38) Product--A commercially manufactured sterile drug or nutrient that has been evaluated for safety and efficacy by the U.S. Food and Drug Administration (FDA). Products are accompanied by full prescribing information, which is commonly known as the FDA-approved manufacturer's labeling or product package insert.

(39) Positive Control--A quality assurance sample prepared to test positive for microbial growth.

(40) Quality assurance--The set of activities used to ensure that the process used in the preparation of sterile drug preparations lead to preparations that meet predetermined standards of quality.

(41) Quality control--The set of testing activities used to determine that the ingredients, components (e.g., containers), and final compounded sterile preparations prepared meet predetermined requirements with respect to identity, purity, non-pyrogenicity, and sterility.

(42) Reasonable quantity--An amount of a compounded drug that:

(A) does not exceed the amount a practitioner anticipates may be used in the practitioner's office or facility before the beyond use date of the drug;

(B) is reasonable considering the intended use of the compounded drug and the nature of the practitioner's practice; and

(C) for any practitioner and all practitioners as a whole, is not greater than an amount the pharmacy is capable of compounding in compliance with pharmaceutical standards for identity, strength, quality, and purity of the compounded drug that are consistent with United States Pharmacopoeia guidelines and accreditation practices.

(43) Segregated Compounding Area--A designated space, either a demarcated area or room, that is restricted to preparing low-risk level compounded sterile preparations with 12-hour or less beyond-use date. Such area shall contain a device that provides unidirectional airflow of ISO Class 5 air quality for preparation of compounded sterile preparations and shall be void of activities and materials that are extraneous to sterile compounding.

(44) Single-dose container--A single-unit container for articles or preparations intended for parenteral administration only. It is intended for a single use. A single-dose container is labeled as such. Examples of single-dose containers include pre-filled syringes, cartridges, fusion-sealed containers, and closure-sealed containers when so labeled.

(45) SOPs--Standard operating procedures.

(46) Sterilizing Grade Membranes--Membranes that are documented to retain 100% of a culture of 107 microorganisms of a strain of Brevundimonas (Pseudomonas) diminuta per square

centimeter of membrane surface under a pressure of not less than 30 psi (2.0 bar). Such filter membranes are nominally at 0.22-micrometer or 0.2-micrometer nominal pore size, depending on the manufacturer's practice.

(47) Sterilization by Filtration--Passage of a fluid or solution through a sterilizing grade membrane to produce a sterile effluent.

(48) Terminal Sterilization--The application of a lethal process, e.g., steam under pressure or autoclaving, to sealed final preparation containers for the purpose of achieving a predetermined sterility assurance level of usually less than 10-6 or a probability of less than one in one million of a non-sterile unit.

(49) Unidirectional Flow--An airflow moving in a single direction in a robust and uniform manner and at sufficient speed to reproducibly sweep particles away from the critical processing or testing area.

(50) USP/NF--The current edition of the United States Pharmacopeia/National Formulary.

(c) Personnel.

(1) Pharmacist-in-charge.

(A) General. The pharmacy shall have a pharmacist-in-charge in compliance with the specific license classification of the pharmacy.

(B) Responsibilities. In addition to the responsibilities for the specific class of pharmacy, the pharmacist-in-charge shall have the responsibility for, at a minimum, the following concerning the compounding of sterile preparations:

(i) developing a system to ensure that all pharmacy personnel responsible for compounding and/or supervising the compounding of sterile preparations within the pharmacy receive appropriate education and training and competency evaluation;

(ii) determining that all personnel involved in compounding sterile preparations obtain continuing education appropriate for the type of compounding done by the personnel;

(iii) supervising a system to ensure appropriate procurement of drugs and devices and storage of all pharmaceutical materials including pharmaceuticals, components used in the compounding of sterile preparations, and drug delivery devices;

(iv) ensuring that the equipment used in compounding is properly maintained;

(v) developing a system for the disposal and distribution of drugs from the pharmacy;

(vi) developing a system for bulk compounding or batch preparation of drugs;

(vii) developing a system for the compounding, sterility assurance, quality assurance, and quality control of sterile preparations; and

(viii) if applicable, ensuring that the pharmacy has a system to dispose of hazardous waste in a manner so as not to endanger the public health.

(2) Pharmacists.

(A) General.

(i) A pharmacist is responsible for ensuring that compounded sterile preparations are accurately identified, measured, diluted, and mixed and are correctly purified, sterilized, packaged, sealed, labeled, stored, dispensed, and distributed.

(ii) A pharmacist shall inspect and approve all components, drug preparation containers, closures, labeling, and any other materials involved in the compounding process.

(iii) A pharmacist shall review all compounding records for accuracy and conduct periodic in-process checks as defined in the pharmacy's policy and procedures.

(iv) A pharmacist shall review all compounding records for accuracy and conduct a final check.

(v) A pharmacist is responsible for ensuring the proper maintenance, cleanliness, and use of all equipment used in the compounding process.

(vi) A pharmacist shall be accessible at all times, 24 hours a day, to respond to patients' and other health professionals' questions and needs.

~~[(B) Prior to September 1, 2015 - initial training and continuing education.]~~

~~*[(i)* All pharmacists who compound sterile preparations for administration to patients or supervise pharmacy technicians and pharmacy technician trainees compounding sterile preparations shall:]~~

~~*[(I)* complete through a single course, a minimum of 20 hours of instruction and experience in the areas listed in paragraph (4)(D) of this subsection. Such training may be obtained through:]~~

~~[(-a-) completion of a structured on-the-job didactic and experiential training program at this pharmacy which provides 20 hours of instruction and experience. Such training may not be transferred to another pharmacy unless the pharmacies are under common ownership and control and use a common training program; or]~~

~~[(-b-) completion of a recognized course in an accredited college of pharmacy or a course sponsored by an ACPE accredited provider which provides 20 hours of instruction and experience;]~~

~~*[(II)* possess knowledge about:]~~

~~[(-a-) aseptic processing;]~~

~~[(-b-) quality control and quality assurance as related to environmental, component, and finished preparation release checks and tests;]~~

~~[(-c-) chemical, pharmaceutical, and clinical properties of drugs;]~~

~~[(-d-) container, equipment, and closure system selection; and]~~

~~[(-e-) sterilization techniques.]~~

~~*[(ii)* The required experiential portion of the training programs specified in this subparagraph must be supervised by an individual who has already completed training as specified in this paragraph or paragraph (3) of this subsection.]~~

~~*[(iii)* All pharmacists engaged in compounding sterile preparations shall obtain continuing education appropriate for the type of compounding done by the pharmacist.]~~

(B) [~~(C)~~] Initial [~~Effective September 1, 2015- initial~~] training and continuing education.

(i) All pharmacists who compound sterile preparations or supervise pharmacy technicians and pharmacy technician trainees compounding sterile preparations shall comply with the following:

(I) complete through a single course, a minimum of 20 hours of instruction and experience in the areas listed in paragraph

(4)(D) of this subsection. Such training shall be obtained through completion of a recognized course in an accredited college of pharmacy or a course sponsored by an ACPE accredited provider;

(II) complete a structured on-the-job didactic and experiential training program at this pharmacy which provides sufficient hours of instruction and experience in the facility's sterile compounding processes and procedures. Such training may not be transferred to another pharmacy unless the pharmacies are under common ownership and control and use a common training program; and

(III) possess knowledge about:

(-a-) aseptic processing;

(-b-) quality control and quality assurance as related to environmental, component, and finished preparation release checks and tests;

(-c-) chemical, pharmaceutical, and clinical properties of drugs;

(-d-) container, equipment, and closure system selection; and

(-e-) sterilization techniques.

(ii) The required experiential portion of the training programs specified in this subparagraph must be supervised by an individual who is actively engaged in performing sterile compounding and is qualified and has completed training as specified in this paragraph or paragraph (3) of this subsection.

(iii) In order to renew a license to practice pharmacy, during the previous licensure period, a pharmacist engaged in sterile compounding shall complete a minimum of:

(I) two hours of ACPE-accredited continuing education relating to one or more of the areas listed in paragraph (4)(D) of this subsection if the pharmacist is engaged in compounding low and medium risk sterile preparations; or

(II) four hours of ACPE-accredited continuing education relating to one or more of the areas listed in paragraph (4)(D) of this subsection if the pharmacist is engaged in compounding high risk sterile preparations.

(3) Pharmacy technicians and pharmacy technician trainees.

(A) General. All pharmacy technicians and pharmacy technician trainees shall meet the training requirements specified in §297.6 of this title (relating to Pharmacy Technician and Pharmacy Technician Trainee Training).

[~~(B) Prior to September 1, 2015 - initial training and continuing education. In addition to specific qualifications for registration, all pharmacy technicians and pharmacy technician trainees who compound sterile preparations for administration to patients shall:~~]

[~~*(i)* have initial training obtained either through completion of:~~]

[~~*(I)* a single course, a minimum of 40 hours of instruction and experience in the areas listed in paragraph (4)(D) of this subsection. Such training may be obtained through:~~]

[~~(-a-) completion of a structured on-the-job didactic and experiential training program at this pharmacy which provides 40 hours of instruction and experience. Such training may not be transferred to another pharmacy unless the pharmacies are under common ownership and control and use a common training program; or~~]

[~~(-b-) completion of a course sponsored by an ACPE accredited provider which provides 40 hours of instruction and experience; or~~]

[~~*(II)* a training program which is accredited by the American Society of Health-System Pharmacists. Individuals enrolled in training programs accredited by the American Society of Health-System Pharmacists may compound sterile preparations in a licensed pharmacy provided the:~~]

[~~(-a-) compounding occurs only during times the individual is assigned to a pharmacy as a part of the experiential component of the American Society of Health-System Pharmacists training program;~~]

[~~(-b-) individual is under the direct supervision of and responsible to a pharmacist who has completed training as specified in paragraph (2) of this subsection; and~~]

[~~(-c-) supervising pharmacist conducts periodic in-process checks as defined in the pharmacy's policy and procedures; and~~]

[~~(-d-) supervising pharmacist conducts a final check.~~]

[~~*(ii)* acquire the required experiential portion of the training programs specified in this subparagraph under the supervision of an individual who has already completed training as specified in paragraph (2) of this subsection or this paragraph.~~]

(B) [~~(C)~~] Initial [~~Effective September 1, 2015- initial~~] training and continuing education.

(i) Pharmacy technicians and pharmacy technician trainees may compound sterile preparations provided the pharmacy technicians and/or pharmacy technician trainees are supervised by a pharmacist as [~~who has completed the training~~] specified in paragraph (2) of this subsection[~~, conducts in-process and final checks, and affixes his or her initials to the appropriate quality control records~~].

(ii) All pharmacy technicians and pharmacy technician trainees who compound sterile preparations for administration to patients shall:

(I) have initial training obtained either through completion of:

(-a-) a single course, a minimum of 40 hours of instruction and experience in the areas listed in paragraph (4)(D) of this subsection. Such training shall be obtained through completion of a course sponsored by an ACPE accredited provider which provides 40 hours of instruction and experience; or

(-b-) a training program which is accredited by the American Society of Health-System Pharmacists.

(II) and

(-a-) complete a structured on-the-job didactic and experiential training program at this pharmacy which provides sufficient hours of instruction and experience in the facility's sterile compounding processes and procedures. Such training may not be transferred to another pharmacy unless the pharmacies are under common ownership and control and use a common training program; and

(-b-) possess knowledge about:

(-1-) aseptic processing;

(-2-) quality control and quality assurance as related to environmental, component, and finished preparation release checks and tests;

(-3-) chemical, pharmaceutical, and clinical properties of drugs;

(-4-) container, equipment, and closure system selection; and

(-5-) sterilization techniques.

(iii) Individuals enrolled in training programs accredited by the American Society of Health-System Pharmacists may compound sterile preparations in a licensed pharmacy provided the:

(I) compounding occurs only during times the individual is assigned to a pharmacy as a part of the experiential component of the American Society of Health-System Pharmacists training program;

(II) individual is under the direct supervision of and responsible to a pharmacist who has completed training as specified in paragraph (2) of this subsection; and

(III) supervising pharmacist conducts periodic in-process checks as defined in the pharmacy's policy and procedures; and

(IV) supervising pharmacist conducts a final check.

(iv) The required experiential portion of the training programs specified in this subparagraph must be supervised by an individual who is actively engaged in performing sterile compounding, is qualified and has completed training as specified in paragraph (2) of this subsection or this paragraph.

(v) In order to renew a registration as a pharmacy technician, during the previous registration period, a pharmacy technician engaged in sterile compounding shall complete a minimum of:

(I) two hours of ACPE accredited continuing education relating to one or more of the areas listed in paragraph (4)(D) of this subsection if the pharmacy technician is engaged in compounding low and medium risk sterile preparations; or

(II) four hours of ACPE accredited continuing education relating to one or more of the areas listed in paragraph (4)(D) of this subsection if pharmacy technician is engaged in compounding high risk sterile preparations.

(4) Evaluation and testing requirements.

(A) All pharmacy personnel preparing sterile preparations shall be trained conscientiously and skillfully by expert personnel through multimedia instructional sources and professional publications in the theoretical principles and practical skills of aseptic manipulations, garbing procedures, aseptic work practices, achieving and maintaining ISO Class 5 environmental conditions, and cleaning and disinfection procedures before beginning to prepare compounded sterile preparations.

(B) All pharmacy personnel preparing sterile preparations shall perform didactic review and pass written and media-fill testing of aseptic manipulative skills initially followed by:

(i) every 12 months for low- and medium-risk level compounding; and

(ii) every six months for high-risk level compounding.

(C) Pharmacy personnel who fail written tests or whose media-fill test vials result in gross microbial colonization shall:

(i) be immediately re-instructed and re-evaluated by expert compounding personnel to ensure correction of all aseptic practice deficiencies; and

(ii) not be allowed to compound sterile preparations for patient use until passing results are achieved.

(D) The didactic and experiential training shall include instruction, experience, and demonstrated proficiency in the following areas:

(i) aseptic technique;

(ii) critical area contamination factors;

(iii) environmental monitoring;

(iv) structure and engineering controls related to facilities;

(v) equipment and supplies;

(vi) sterile preparation calculations and terminology;

(vii) sterile preparation compounding documentation;

(viii) quality assurance procedures;

(ix) aseptic preparation procedures including proper gowning and gloving technique;

(x) handling of hazardous drugs, if applicable;

(xi) cleaning procedures; and

(xii) general conduct in the clean room.

(E) The aseptic technique of each person compounding or responsible for the direct supervision of personnel compounding sterile preparations shall be observed and evaluated by expert personnel as satisfactory through written and practical tests, and challenge testing, and such evaluation documented. Compounding personnel shall not evaluate their own aseptic technique or results of their own media-fill challenge testing.

(F) Media-fill tests must be conducted at each pharmacy where an individual compounds sterile preparations. No preparation intended for patient use shall be compounded by an individual until the on-site media-fill tests indicate that the individual can competently perform aseptic procedures, except that a pharmacist may temporarily compound sterile preparations and supervise pharmacy technicians compounding sterile preparations without media-fill tests provided the pharmacist completes the on-site media-fill tests within seven days of commencing work at the pharmacy.

(G) Media-fill tests procedures for assessing the preparation of specific types of sterile preparations shall be representative of the most challenging or stressful conditions encountered by the pharmacy personnel being evaluated and, if applicable, for sterilizing high-risk level compounded sterile preparations.

(H) Media-fill challenge tests simulating high-risk level compounding shall be used to verify the capability of the compounding environment and process to produce a sterile preparation.

(I) Commercially available sterile fluid culture media, such as Soybean-Casein Digest Medium shall be able to promote exponential colonization of bacteria that are most likely to be transmitted to compounding sterile preparations from the compounding personnel and environment. Media-filled vials are generally incubated at 20 to 25 degrees Celsius or at 30 to 35 degrees Celsius for a minimum of 14 days. If two temperatures are used for incubation of media-filled samples, then these filled containers should be incubated for at least 7 days at each temperature. Failure is indicated by visible turbidity in the medium on or before 14 days.

(J) The pharmacist-in-charge shall ensure continuing competency of pharmacy personnel through in-service education,

training, and media-fill tests to supplement initial training. Personnel competency shall be evaluated:

(i) during orientation and training prior to the regular performance of those tasks;

(ii) whenever the quality assurance program yields an unacceptable result;

(iii) whenever unacceptable techniques are observed; and

(iv) at least on an annual basis for low- and medium-risk level compounding, and every six months for high-risk level compounding.

(K) The pharmacist-in-charge shall ensure that proper hand hygiene and garbing practices of compounding personnel are evaluated prior to compounding, supervising, or verifying sterile preparations intended for patient use and whenever an aseptic media fill is performed.

(i) Sampling of compounding personnel glove fingertips shall be performed for all risk level compounding.

(ii) All compounding personnel shall demonstrate competency in proper hand hygiene and garbing procedures and in aseptic work practices (e.g., disinfection of component surfaces, routine disinfection of gloved hands).

(iii) Sterile contact agar plates shall be used to sample the gloved fingertips of compounding personnel after garbing in order to assess garbing competency and after completing the media-fill preparation (without applying sterile 70% IPA).

(iv) The visual observation shall be documented and maintained to provide a permanent record and long-term assessment of personnel competency.

(v) All compounding personnel shall successfully complete an initial competency evaluation and gloved fingertip/thumb sampling procedure no less than three times before initially being allowed to compound sterile preparations for patient use. Immediately after the compounding personnel completes the hand hygiene and garbing procedure (i.e., after donning of sterile gloves and before any disinfecting with sterile 70% IPA), the evaluator will collect a gloved fingertip and thumb sample from both hands of the compounding personnel onto agar plates or media test paddles by having the individual lightly touching each fingertip onto the agar. The test plates or test paddles will be incubated for the appropriate incubation period and at the appropriate temperature. Results of the initial gloved fingertip evaluations shall indicate zero colony-forming units (0 CFU) growth on the agar plates or media test paddles, or the test shall be considered a failure. In the event of a failed gloved fingertip test, the evaluation shall be repeated until the individual can successfully don sterile gloves and pass the gloved fingertip evaluation, defined as zero CFUs growth. No preparation intended for patient use shall be compounded by an individual until the results of the initial gloved fingertip evaluation indicate that the individual can competently perform aseptic procedures except that a pharmacist may temporarily supervise pharmacy technicians compounding sterile preparations while waiting for the results of the evaluation for no more than three days.

(vi) Re-evaluation of all compounding personnel shall occur at least annually for compounding personnel who compound low and medium risk level preparations and every six months for compounding personnel who compound high risk level preparations. Results of gloved fingertip tests conducted immediately after compounding personnel complete a compounding procedure shall indicate no more than 3 CFUs growth, or the test shall be considered a failure, in which case, the evaluation shall be repeated until an acceptable test can be achieved (i.e., the results indicated no more than 3 CFUs growth).

(L) The pharmacist-in-charge shall ensure surface sampling shall be conducted in all ISO classified areas on a periodic basis. Sampling shall be accomplished using contact plates at the conclusion of compounding. The sample area shall be gently touched with the agar surface by rolling the plate across the surface to be sampled.

(5) Documentation of Training. The pharmacy shall maintain a record of the training and continuing education on each person who compounds sterile preparations. The record shall contain, at a minimum, a written record of initial and in-service training, education, and the results of written and practical testing and media-fill testing of pharmacy personnel. The record shall be maintained and available for inspection by the board and contain the following information:

(A) name of the person receiving the training or completing the testing or media-fill tests;

(B) date(s) of the training, testing, or media-fill challenge testing;

(C) general description of the topics covered in the training or testing or of the process validated;

(D) name of the person supervising the training, testing, or media-fill challenge testing; and

(E) signature or initials of the person receiving the training or completing the testing or media-fill challenge testing and the pharmacist-in-charge or other pharmacist employed by the pharmacy and designated by the pharmacist-in-charge as responsible for training, testing, or media-fill challenge testing of personnel.

(d) Operational Standards.

(1) General Requirements.

(A) Sterile preparations may be compounded:

(i) upon presentation of a practitioner's prescription drug or medication order based on a valid pharmacist/patient/prescriber relationship;

(ii) in anticipation of future prescription drug or medication orders based on routine, regularly observed prescribing patterns; or

(iii) in reasonable quantities for office use by a practitioner and for use by a veterinarian.

(B) Sterile compounding in anticipation of future prescription drug or medication orders must be based upon a history of receiving valid prescriptions issued within an established pharmacist/patient/prescriber relationship, provided that in the pharmacist's professional judgment the quantity prepared is stable for the anticipated shelf time.

(i) The pharmacist's professional judgment shall be based on the criteria used to determine a beyond-use date outlined in paragraph (6)(G) of this subsection.

(ii) Documentation of the criteria used to determine the stability for the anticipated shelf time must be maintained and be available for inspection.

(iii) Any preparation compounded in anticipation of future prescription drug or medication orders shall be labeled. Such label shall contain:

(I) name and strength of the compounded preparation or list of the active ingredients and strengths;

(II) facility's lot number;

(III) beyond-use date as determined by the pharmacist using appropriate documented criteria as outlined in paragraph (6)(G) of this subsection;

(IV) quantity or amount in the container;

(V) appropriate ancillary instructions, such as storage instructions or cautionary statements, including hazardous drug warning labels where appropriate; and

(VI) device-specific instructions, where appropriate.

(C) Commercially available products may be compounded for dispensing to individual patients or for office use provided the following conditions are met:

(i) the commercial product is not reasonably available from normal distribution channels in a timely manner to meet individual patient's needs;

(ii) the pharmacy maintains documentation that the product is not reasonably available due to a drug shortage or unavailability from the manufacturer; and

(iii) the prescribing practitioner has requested that the drug be compounded as described in subparagraph (D) of this paragraph.

(D) A pharmacy may not compound preparations that are essentially copies of commercially available products (e.g., the preparation is dispensed in a strength that is only slightly different from a commercially available product) unless the prescribing practitioner specifically orders the strength or dosage form and specifies why the individual patient needs the particular strength or dosage form of the preparation or why the preparation for office use is needed in the particular strength or dosage form of the preparation. The prescribing practitioner shall provide documentation of a patient specific medical need and the preparation produces a clinically significant therapeutic response (e.g., the physician requests an alternate preparation due to hypersensitivity to excipients or preservative in the FDA-approved product, or the physician requests an effective alternate dosage form) or if the drug product is not commercially available. The unavailability of such drug product must be documented prior to compounding. The methodology for documenting unavailability includes maintaining a copy of the wholesaler's notification showing back-ordered, discontinued, or out-of-stock items. This documentation must be available in hard-copy or electronic format for inspection by the board.

(E) A pharmacy may enter into an agreement to compound and dispense prescription/medication orders for another pharmacy provided the pharmacy complies with the provisions of §291.125 of this title (relating to Centralized Prescription Dispensing).

(F) Compounding pharmacies/pharmacists may advertise and promote the fact that they provide sterile prescription compounding services, which may include specific drug preparations and classes of drugs.

(G) A pharmacy may not compound veterinary preparations for use in food producing animals except in accordance with federal guidelines.

(H) Compounded sterile preparations, including hazardous drugs and radiopharmaceuticals, shall be prepared only under conditions that protect the pharmacy personnel in the preparation and storage areas.

(2) Microbial Contamination Risk Levels. Risk Levels for sterile compounded preparations shall be as outlined in Chapter 797, Pharmacy Compounding--Sterile Preparations of the USP/NF and as listed in this paragraph.

(A) Low-risk level compounded sterile preparations.

(i) Low-Risk conditions. Low-risk level compounded sterile preparations are those compounded under all of the following conditions.

(I) The compounded sterile preparations are compounded with aseptic manipulations entirely within ISO Class 5 or better air quality using only sterile ingredients, products, components, and devices.

(II) The compounding involves only transfer, measuring, and mixing manipulations using not more than three commercially manufactured packages of sterile products and not more than two entries into any one sterile container or package (e.g., bag, vial) of sterile product or administration container/device to prepare the compounded sterile preparation.

(III) Manipulations are limited to aseptically opening ampuls, penetrating disinfected stoppers on vials with sterile needles and syringes, and transferring sterile liquids in sterile syringes to sterile administration devices, package containers of other sterile products, and containers for storage and dispensing.

(IV) For a low-risk preparation, in the absence of passing a [~~direct~~] sterility test [~~testing results or appropriate information sources that justify different limits,~~] the storage periods cannot [~~may not~~] exceed the following periods: before administration the compounded sterile preparation is stored properly and are exposed for not more than 48 hours at controlled room temperature, for not more than 14 days if stored at a cold temperature, and for 45 days if stored in a frozen state between minus 25 degrees Celsius and minus 10 degrees Celsius. For delayed activation device systems, the storage period begins when the device is activated.

(ii) Examples of Low-Risk Compounding. Examples of low-risk compounding include the following.

(I) Single volume transfers of sterile dosage forms from ampuls, bottles, bags, and vials using sterile syringes with sterile needles, other administration devices, and other sterile containers. The solution content of ampules shall be passed through a sterile filter to remove any particles.

(II) Simple aseptic measuring and transferring with not more than three packages of manufactured sterile products, including an infusion or diluent solution to compound drug admixtures and nutritional solutions.

(B) Low-Risk Level compounded sterile preparations with 12-hour or less beyond-use date. Low-risk level compounded sterile preparations are those compounded pursuant to a physician's order for a specific patient under all of the following conditions.

(i) The compounded sterile preparations are compounded in compounding aseptic isolator or compounding aseptic containment isolator that does not meet the requirements described in paragraph (7)(C) or (D) of this subsection (relating to Primary Engineering Control Device) or the compounded sterile preparations are compounded in laminar airflow workbench or a biological safety cabinet that cannot be located within the buffer area.

(ii) The primary engineering control device shall be certified and maintain ISO Class 5 for exposure of critical sites and shall be located in a segregated compounding area restricted to sterile compounding activities that minimizes the risk of contamination of the compounded sterile preparation.

(iii) The segregated compounding area shall not be in a location that has unsealed windows or doors that connect to the outdoors or high traffic flow, or that is adjacent to construction sites, warehouses, or food preparation.

(iv) For a low-risk preparation compounded as described in clauses (i) - (iii) of this subparagraph, administration of such compounded sterile preparations must commence within 12 hours of preparation or as recommended in the manufacturers' package insert, whichever is less. However, the administration of sterile radiopharmaceuticals, with documented testing of chemical stability, may be administered beyond 12 hours of preparation.

(C) Medium-risk level compounded sterile preparations.

(i) Medium-Risk Conditions. Medium-risk level compounded sterile preparations, are those compounded aseptically under low-risk conditions and one or more of the following conditions exists.

(I) Multiple individual or small doses of sterile products are combined or pooled to prepare a compounded sterile preparation that will be administered either to multiple patients or to one patient on multiple occasions.

(II) The compounding process includes complex aseptic manipulations other than the single-volume transfer.

(III) The compounding process requires unusually long duration, such as that required to complete the dissolution or homogenous mixing (e.g., reconstitution of intravenous immunoglobulin or other intravenous protein products).

(IV) The compounded sterile preparations do not contain broad spectrum bacteriostatic substances and they are administered over several days (e.g., an externally worn infusion device).

(V) For a medium-risk preparation, in the absence of passing a [~~direct~~] sterility test [~~testing results~~] the storage periods cannot [~~beyond use dates may not~~] exceed the following time periods: before administration, the compounded sterile preparations are properly stored and are exposed for not more than 30 hours at controlled room temperature, for not more than 9 days at a cold temperature, and for 45 days in solid frozen state between minus 25 degrees Celsius and minus 10 degrees Celsius.

(ii) Examples of medium-risk compounding. Examples of medium-risk compounding include the following.

(I) Compounding of total parenteral nutrition fluids using a manual or automated device during which there are multiple injections, detachments, and attachments of nutrient source products to the device or machine to deliver all nutritional components to a final sterile container.

(II) Filling of reservoirs of injection and infusion devices with more than three sterile drug products and evacuations of air from those reservoirs before the filled device is dispensed.

(III) Filling of reservoirs of injection and infusion devices with volumes of sterile drug solutions that will be administered over several days at ambient temperatures between 25 and 40 degrees Celsius (77 and 104 degrees Fahrenheit).

(IV) Transfer of volumes from multiple ampuls or vials into a single, final sterile container or product.

(D) High-risk level compounded sterile preparations.

(i) High-risk Conditions. High-risk level compounded sterile preparations are those compounded under any of the following conditions.

(I) Non-sterile ingredients, including manufactured products not intended for sterile routes of administration (e.g., oral) are incorporated or a non-sterile device is employed before terminal sterilization.

(II) Any of the following are exposed to air quality worse than ISO Class 5 for more than 1 hour:

(-a-) sterile contents of commercially manufactured products;

(-b-) CSPs that lack effective antimicrobial preservatives; and

(-c-) sterile surfaces of devices and containers for the preparation, transfer, sterilization, and packaging of CSPs.

(III) Compounding personnel are improperly garbed and gloved.

(IV) Non-sterile water-containing preparations are exposed no more than 6 hours before being sterilized.

(V) It is assumed, and not verified by examination of labeling and documentation from suppliers or by direct determination, that the chemical purity and content strength of ingredients meet their original or compendial specifications in unopened or in opened packages of bulk ingredients.

(VI) For a sterilized high-risk level preparation, in the absence of passing a sterility test, the storage periods cannot exceed the following time periods: before administration, the compounded sterile preparations are properly stored and are exposed for not more than 24 hours at controlled room temperature, for not more than 3 days at a cold temperature, and for 45 days in solid frozen state between minus 25 degrees Celsius and minus 10 degrees Celsius.

(VII) All non-sterile measuring, mixing, and purifying devices are rinsed thoroughly with sterile, pyrogen-free water, and then thoroughly drained or dried immediately before use for high-risk compounding. All high-risk compounded sterile solutions subjected to terminal sterilization are prefiltered by passing through a filter with a nominal pore size not larger than 1.2 micron preceding or during filling into their final containers to remove particulate matter. Sterilization of high-risk level compounded sterile preparations by filtration shall be performed with a sterile 0.2 micrometer or 0.22 micrometer nominal pore size filter entirely within an ISO Class 5 or superior air quality environment.

(ii) Examples of high-risk compounding. Examples of high-risk compounding include the following.

(I) Dissolving non-sterile bulk drug powders to make solutions, which will be terminally sterilized.

(II) Exposing the sterile ingredients and components used to prepare and package compounded sterile preparations to room air quality worse than ISO Class 5 for more than one hour.

(III) Measuring and mixing sterile ingredients in non-sterile devices before sterilization is performed.

(IV) Assuming, without appropriate evidence or direct determination, that packages of bulk ingredients contain at least

95% by weight of their active chemical moiety and have not been contaminated or adulterated between uses.

(3) Immediate Use Compounded Sterile Preparations. For the purpose of emergency or immediate patient care, such situations may include cardiopulmonary resuscitation, emergency room treatment, preparation of diagnostic agents, or critical therapy where the preparation of the compounded sterile preparation under low-risk level conditions would subject the patient to additional risk due to delays in therapy. Compounded sterile preparations are exempted from the requirements described in this paragraph for low-risk level compounded sterile preparations when all of the following criteria are met.

(A) Only simple aseptic measuring and transfer manipulations are performed with not more than three sterile non-hazardous commercial drug and diagnostic radiopharmaceutical drug products, including an infusion or diluent solution, from the manufacturers' original containers and not more than two entries into any one container or package of sterile infusion solution or administration container/device.

(B) Unless required for the preparation, the compounding procedure occurs continuously without delays or interruptions and does not exceed 1 hour.

(C) During preparation, aseptic technique is followed and, if not immediately administered, the finished compounded sterile preparation is under continuous supervision to minimize the potential for contact with nonsterile surfaces, introduction of particulate matter of biological fluids, mix-ups with other compounded sterile preparations, and direct contact of outside surfaces.

(D) Administration begins not later than one hour following the completion of preparing the compounded sterile preparation.

(E) When the compounded sterile preparations is not administered by the person who prepared it, or its administration is not witnessed by the person who prepared it, the compounded sterile preparation shall bear a label listing patient identification information such as name and identification number(s), the names and amounts of all ingredients, the name or initials of the person who prepared the compounded sterile preparation, and the exact 1-hour beyond-use time and date.

(F) If administration has not begun within one hour following the completion of preparing the compounded sterile preparation, the compounded sterile preparation is promptly and safely discarded. Immediate use compounded sterile preparations shall not be stored for later use.

(G) Hazardous drugs shall not be prepared as immediate use compounded sterile preparations.

(4) Single-dose and multiple dose containers.

(A) Opened or needle punctured single-dose containers, such as bags bottles, syringes, and vials of sterile products shall be used within one hour if opened in worse than ISO Class 5 air quality. Any remaining contents must be discarded.

(B) Single-dose containers, including single-dose large volume parenteral solutions and single-dose vials, exposed to ISO Class 5 or cleaner air may be used up to six hours after initial needle puncture.

(C) Opened single-dose fusion sealed containers shall not be stored for any time period.

(D) Multiple-dose containers may be used up to 28 days after initial needle puncture unless otherwise specified by the manufacturer.

(5) Library. In addition to the library requirements of the pharmacy's specific license classification, a pharmacy shall maintain current or updated copies in hard-copy or electronic format of each of the following:

(A) a reference text on injectable drug preparations, such as Handbook on Injectable Drug Products;

(B) a specialty reference text appropriate for the scope of pharmacy services provided by the pharmacy, e.g., if the pharmacy prepares hazardous drugs, a reference text on the preparation of hazardous drugs; and

(C) the United States Pharmacopeia/National Formulary containing USP Chapter 71, Sterility Tests, USP Chapter 85, Bacterial Endotoxins Test, Pharmaceutical Compounding--Nonsterile Preparations, USP Chapter 795, USP Chapter 797, Pharmaceutical Compounding--Sterile Preparations, and USP Chapter 1163, Quality Assurance in Pharmaceutical Compounding; and

(D) any additional USP/NF chapters applicable to the practice of the pharmacy (e.g., USP Chapter 800, Hazardous Drugs--Handling in Healthcare Settings, USP Chapter 823, Positron Emission Tomography Drugs for Compounding, Investigational, and Research Uses).

(6) Environment. Compounding facilities shall be physically designed and environmentally controlled to minimize airborne contamination from contacting critical sites.

(A) Low and Medium Risk Preparations. A pharmacy that prepares low- and medium-risk preparations shall have a clean room for the compounding of sterile preparations that is constructed to minimize the opportunities for particulate and microbial contamination. The clean room shall:

(i) be clean, well lit, and of sufficient size to support sterile compounding activities;

(ii) be maintained at a temperature of 20 degrees Celsius or cooler and at a humidity below 60% [~~a comfortable temperature (e.g., 20 degrees Celsius or cooler) allowing compounding personnel to perform flawlessly when attired in the required aseptic compounding garb~~];

(iii) be used only for the compounding of sterile preparations;

(iv) be designed such that hand sanitizing and gowning occurs outside the buffer area but allows hands-free access by compounding personnel to the buffer area;

(v) have non-porous and washable floors or floor covering to enable regular disinfection;

(vi) be ventilated in a manner to avoid disruption from the HVAC system and room cross-drafts;

(vii) have walls, ceilings, floors, fixtures, shelving, counters, and cabinets that are smooth, impervious, free from cracks and crevices (e.g., coved), non-shedding and resistant to damage by disinfectant agents;

(viii) have junctures of ceilings to walls coved or caulked to avoid cracks and crevices;

(ix) have drugs and supplies stored on shelving areas above the floor to permit adequate floor cleaning;

(x) contain only the appropriate compounding supplies and not be used for bulk storage for supplies and materials. Objects that shed particles shall not be brought into the clean room. A Class B pharmacy may use low-linting absorbent materials in the primary engineering control device;

(xi) contain an ante-area that contains a sink with hot and cold running water that enables hands-free use with a closed system of soap dispensing to minimize the risk of extrinsic contamination. A Class B pharmacy may have a sink with hot and cold running water that enables hands-free use with a closed system of soap dispensing immediately outside the ante-area if antiseptic hand cleansing is performed using a waterless alcohol-based surgical hand scrub with persistent activity following manufacturers' recommendations once inside the ante-area; and

(xii) contain a buffer area. The following is applicable for the buffer area.

(I) There shall be some demarcation designation that delineates the ante-area from the buffer area. The demarcation shall be such that it does not create conditions that could adversely affect the cleanliness of the area.

(II) The buffer area shall be segregated from surrounding, unclassified spaces to reduce the risk of contaminants being blown, dragged, or otherwise introduced into the filtered unidirectional airflow environment, and this segregation should be continuously monitored.

(III) A buffer area that is not physically separated from the ante-area shall employ the principle of displacement airflow as defined in Chapter 797, Pharmaceutical Compounding--Sterile Preparations, of the USP/NF, with limited access to personnel.

(IV) The buffer area shall not contain sources of water (i.e., sinks) or floor drains other than distilled or sterile water introduced for facilitating the use of heat block wells for radiopharmaceuticals.

(B) High-risk Preparations.

(i) In addition to the requirements in subparagraph (A) of this paragraph, when high-risk preparations are compounded, the primary engineering control shall be located in a buffer area that provides a physical separation, through the use of walls, doors and pass-throughs and has a minimum differential positive pressure of 0.02 to 0.05 inches water column.

(ii) Presterilization procedures for high-risk level compounded sterile preparations, such as weighing and mixing, shall be completed in no worse than an ISO Class 8 environment.

(C) Automated compounding device.

(i) General. If automated compounding devices are used, the pharmacy shall have a method to calibrate and verify the accuracy of automated compounding devices used in aseptic processing and document the calibration and verification on a daily basis, based on the manufacturer's recommendations, and review the results at least weekly.

(ii) Loading bulk drugs into automated compounding devices.

(I) Automated compounding device may be loaded with bulk drugs only by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist.

(II) The label of an automated compounding device container shall indicate the brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor.

(III) Records of loading bulk drugs into an automated compounding device shall be maintained to show:

(-a-) name of the drug, strength, and dosage form;

(-b-) manufacturer or distributor;

(-c-) manufacturer's lot number;

(-d-) manufacturer's expiration date;

(-e-) quantity added to the automated compounding device;

(-f-) date of loading;

(-g-) name, initials, or electronic signature of the person loading the automated compounding device; and

(-h-) name, initials, or electronic signature of the responsible pharmacist.

(IV) The automated compounding device shall not be used until a pharmacist verifies that the system is properly loaded and affixes his or her signature or electronic signature to the record specified in subclause (III) of this clause.

(D) Hazardous drugs. If the preparation is hazardous, the following is also applicable.

(i) Hazardous drugs shall be prepared only under conditions that protect personnel during preparation and storage.

(ii) Hazardous drugs shall be stored separately from other inventory in a manner to prevent contamination and personnel exposure.

(iii) All personnel involved in the compounding of hazardous drugs shall wear appropriate protective apparel, such as gowns, face masks, eye protection, hair covers, shoe covers or dedicated shoes, and appropriate gloving at all times when handling hazardous drugs, including receiving, distribution, stocking, inventorying, preparation, for administration and disposal.

(iv) Appropriate safety and containment techniques for compounding hazardous drugs shall be used in conjunction with aseptic techniques required for preparing sterile preparations.

(v) Disposal of hazardous waste shall comply with all applicable local, state, and federal requirements.

(vi) Prepared doses of hazardous drugs must be dispensed, labeled with proper precautions inside and outside, and distributed in a manner to minimize patient contact with hazardous agents.

(E) Blood-labeling procedures. When compounding activities require the manipulation of a patient's blood-derived material (e.g., radiolabeling a patient's or donor's white blood cells), the manipulations shall be performed in a ISO Class 5 biological safety cabinet located in a buffer area and shall be clearly separated from routine material-handling procedures and equipment used in preparation activities to avoid any cross-contamination. The preparations shall not require sterilization.

(F) Cleaning and disinfecting the sterile compounding areas. The following cleaning and disinfecting practices and frequencies apply to direct and contiguous compounding areas, which include ISO Class 5 compounding areas for exposure of critical sites as well as buffer areas, ante-areas, and segregated compounding areas.

(i) The pharmacist-in-charge is responsible for developing written procedures for cleaning and disinfecting the direct

and contiguous compounding areas and assuring the procedures are followed.

(ii) These procedures shall be conducted at the beginning of each work shift, before each batch preparation is started, when there are spills, and when surface contamination is known or suspected resulting from procedural breaches, and every 30 minutes during continuous compounding of individual compounded sterile preparations, unless a particular compounding procedure requires more than 30 minutes to complete, in which case, the direct compounding area is to be cleaned immediately after the compounding activity is completed.

(iii) Before compounding is performed, all items shall be removed from the direct and contiguous compounding areas and all surfaces are cleaned by removing loose material and residue from spills, followed by an application of a residue-free disinfecting agent (e.g., IPA), which is allowed to dry before compounding begins. In a Class B pharmacy, objects used in preparing sterile radiopharmaceuticals (e.g., dose calibrator) which cannot be reasonably removed from the compounding area shall be sterilized with an application of a residue-free disinfection agent.

(iv) Work surfaces in the buffer areas and ante-areas, as well as segregated compounding areas, shall be cleaned and disinfected at least daily. Dust and debris shall be removed when necessary from storage sites for compounding ingredients and supplies using a method that does not degrade the ISO Class 7 or 8 air quality.

(v) Floors in the buffer area, ante-area, and segregated compounding area are cleaned by mopping with a cleaning and disinfecting agent at least once daily when no aseptic operations are in progress. Mopping shall be performed by trained personnel using approved agents and procedures described in the written SOPs. It is incumbent on compounding personnel to ensure that such cleaning is performed properly.

(vi) In the buffer area, ante-area, and segregated compounding area, walls, ceilings, and shelving shall be cleaned and disinfected monthly. Cleaning and disinfecting agents shall be used with careful consideration of compatibilities, effectiveness, and inappropriate or toxic residues.

(vii) All cleaning materials, such as wipers, sponges, and mops, shall be non-shedding, and dedicated to use in the buffer area, ante-area, and segregated compounding areas and shall not be removed from these areas except for disposal. Floor mops may be used in both the buffer area and ante-area, but only in that order. If cleaning materials are reused, procedures shall be developed that ensure that the effectiveness of the cleaning device is maintained and that repeated use does not add to the bio-burden of the area being cleaned.

(viii) Supplies and equipment removed from shipping cartons must be wiped with a disinfecting agent, such as sterile IPA. After the disinfectant is sprayed or wiped on a surface to be disinfected, the disinfectant shall be allowed to dry, during which time the item shall not be used for compounding purposes. However, if sterile supplies are received in sealed pouches, the pouches may be removed as the supplies are introduced into the ISO Class 5 area without the need to disinfect the individual sterile supply items. No shipping or other external cartons may be taken into the buffer area or segregated compounding area.

(ix) Storage shelving emptied of all supplies, walls, and ceilings are cleaned and disinfected at planned intervals, monthly, if not more frequently.

(x) Cleaning must be done by personnel trained in appropriate cleaning techniques.

(xi) Proper documentation and frequency of cleaning must be maintained and shall contain the following:

(I) date and time of cleaning;

(II) type of cleaning performed; and

(III) name of individual who performed the cleaning.

(G) Security requirements. The pharmacist-in-charge may authorize personnel to gain access to that area of the pharmacy containing dispensed sterile preparations, in the absence of the pharmacist, for the purpose of retrieving dispensed prescriptions to deliver to patients. If the pharmacy allows such after-hours access, the area containing the dispensed sterile preparations shall be an enclosed and lockable area separate from the area containing undispensed prescription drugs. A list of the authorized personnel having such access shall be in the pharmacy's policy and procedure manual.

(H) Storage requirements and beyond-use dating.

(i) Storage requirements. All drugs shall be stored at the proper temperature and conditions, as defined in the USP/NF and in §291.15 of this title (relating to Storage of Drugs).

(ii) Beyond-use dating.

(I) Beyond-use dates for compounded sterile preparations shall be assigned based on professional experience, which shall include careful interpretation of appropriate information sources for the same or similar formulations.

(II) Beyond-use dates for compounded sterile preparations that are prepared strictly in accordance with manufacturers' product labeling must be those specified in that labeling, or from appropriate literature sources or direct testing.

(III) When assigning a beyond-use date, compounding personnel shall consult and apply drug-specific and general stability documentation and literature where available, and they should consider the nature of the drug and its degradation mechanism, the container in which it is packaged, the expected storage conditions, and the intended duration of therapy.

(IV) The sterility and storage and stability beyond-use date for attached and activated container pairs of drug products for intravascular administration shall be applied as indicated by the manufacturer.

(7) Primary engineering control device. The pharmacy shall prepare sterile preparations in a primary engineering control device (PEC), such as a laminar air flow hood, biological safety cabinet, compounding aseptic isolator (CAI), or compounding aseptic containment isolator (CACI) which is capable of maintaining at least ISO Class 5 conditions for 0.5 micrometer particles while compounding sterile preparations.

(A) Laminar air flow hood. If the pharmacy is using a laminar air flow hood as its PEC, the laminar air flow hood shall:

(i) be located in the buffer area and placed in the buffer area in a manner as to avoid conditions that could adversely affect its operation such as strong air currents from opened doors, personnel traffic, or air streams from the heating, ventilating and air condition system;

(ii) be certified by a qualified independent contractor according to the appropriate Controlled Environment Testing Association (CETA) standard (CAG-003-2006) for operational efficiency at least every six months and whenever the device or room is relocated or altered or major service to the facility is performed;

(iii) have pre-filters inspected periodically and replaced as needed, in accordance with written policies and procedures and the manufacturer's specification, and the inspection and/or replacement date documented; and

(iv) be located in a buffer area that has a minimum differential positive pressure of 0.02 to 0.05 inches water column. A buffer area that is not physically separated from the ante-area shall employ the principle of displacement airflow as defined in Chapter 797, Pharmaceutical Compounding--Sterile Preparations, of the USP/NF, with limited access to personnel.

(B) Biological safety cabinet.

(i) If the pharmacy is using a biological safety cabinet as its PEC for the preparation of hazardous sterile compounded preparations, the biological safety cabinet shall be a Class II or III vertical flow biological safety cabinet located in an ISO Class 7 area that is physically separated from other preparation areas. The area for preparation of sterile chemotherapeutic preparations shall:

(I) have not less than 0.01 inches water column negative pressure to the adjacent positive pressure ISO Class 7 or better ante-area; and

(II) have a pressure indicator that can be readily monitored for correct room pressurization.

(ii) Pharmacies that prepare a low volume of hazardous drugs, are not required to comply with the provisions of clause (i) of this subparagraph if the pharmacy uses a device that provides two tiers of containment (e.g., closed-system vial transfer device within a BSC or CACI that is located in a non-negative pressure room).

(iii) If the pharmacy is using a biological safety cabinet as its PEC for the preparation of non-hazardous sterile compounded preparations, the biological safety cabinet shall:

(I) be located in the buffer area and placed in the buffer area in a manner as to avoid conditions that could adversely affect its operation such as strong air currents from opened doors, personnel traffic, or air streams from the heating, ventilating and air condition system;

(II) be certified by a qualified independent contractor according to the International Organization of Standardization (ISO) Classification of Particulate Matter in Room Air (ISO 14644-1) for operational efficiency at least every six months and whenever the device or room is relocated or altered or major service to the facility is performed, in accordance with the manufacturer's specifications and test procedures specified in the Institute of Environmental Sciences and Technology (IEST) document IEST-RP-CC002.3;

(III) have pre-filters inspected periodically and replaced as needed, in accordance with written policies and procedures and the manufacturer's specification, and the inspection and/or replacement date documented; and

(IV) be located in a buffer area that has a minimum differential positive pressure of 0.02 to 0.05 inches water column.

(C) Compounding aseptic isolator.

(i) If the pharmacy is using a compounding aseptic isolator (CAI) as its PEC, the CAI shall provide unidirectional airflow within the main processing and antechambers, and be placed in an ISO Class 7 buffer area unless the isolator meets all of the following conditions:

(I) The isolator must provide isolation from the room and maintain ISO Class 5 during dynamic operating conditions including transferring ingredients, components, and devices into and out of the isolator and during preparation of compounded sterile preparations.

(II) Particle counts sampled approximately 6 to 12 inches upstream of the critical exposure site must maintain ISO Class 5 levels during compounding operations.

(III) The CAI must be validated according to CETA CAG-002-2006 standards.

(IV) The pharmacy shall maintain documentation from the manufacturer that the isolator meets this standard when located in worse than ISO Class 7 environments.

(ii) If the isolator meets the requirements in clause (i) of this subparagraph, the CAI may be placed in a non-ISO classified area of the pharmacy; however, the area shall be segregated from other areas of the pharmacy and shall:

(I) be clean, well lit, and of sufficient size;

(II) be used only for the compounding of low- and medium-risk, non-hazardous sterile preparations;

(III) be located in an area of the pharmacy with non-porous and washable floors or floor covering to enable regular disinfection; and

(IV) be an area in which the CAI is placed in a manner as to avoid conditions that could adversely affect its operation.

(iii) In addition to the requirements specified in clauses (i) and (ii) of this subparagraph, if the CAI is used in the compounding of high-risk non-hazardous preparations, the CAI shall be placed in an area or room with at least ISO 8 quality air so that high-risk powders weighed in at least ISO-8 air quality conditions, compounding utensils for measuring and other compounding equipment are not exposed to lesser air quality prior to the completion of compounding and packaging of the high-risk preparation.

(D) Compounding aseptic containment isolator.

(i) If the pharmacy is using a compounding aseptic containment isolator as its PEC for the preparation of low- and medium-risk hazardous drugs, the CACI shall be located in a separate room away from other areas of the pharmacy and shall:

(I) provide at least 0.01 inches water column negative pressure compared to the other areas of the pharmacy;

(II) provide unidirectional airflow within the main processing and antechambers, and be placed in an ISO Class 7 buffer area, unless the CACI meets all of the following conditions.

(-a-) The isolator must provide isolation from the room and maintain ISO Class 5 during dynamic operating conditions including transferring ingredients, components, and devices into and out of the isolator and during preparation of compounded sterile preparations.

(-b-) Particle counts sampled approximately 6 to 12 inches upstream of the critical exposure site must maintain ISO Class 5 levels during compounding operations.

(-c-) The CACI must be validated according to CETA CAG-002-2006 standards.

(-d-) The pharmacy shall maintain documentation from the manufacturer that the isolator meets this standard when located in worse than ISO Class 7 environments.

(ii) If the CACI meets all conditions specified in clause (i) of this subparagraph, the CACI shall not be located in the same room as a CAI, but shall be located in a separate room in the

pharmacy, that is not required to maintain ISO classified air. The room in which the CACI is located shall provide a minimum of 0.01 inches water column negative pressure compared with the other areas of the pharmacy and shall meet the following requirements:

(I) be clean, well lit, and of sufficient size;

(II) be maintained at a temperature of 20 degrees Celsius or cooler and a humidity below 60% [~~comfortable temperature (e.g., 20 degrees Celsius or cooler) allowing compounding personnel to perform flawlessly when attired in the required aseptic compounding garb~~];

(III) be used only for the compounding of hazardous sterile preparations;

(IV) be located in an area of the pharmacy with walls, ceilings, floors, fixtures, shelving, counters, and cabinets that are smooth, impervious, free from cracks and crevices, non-shedding and resistant to damage by disinfectant agents; and

(V) have non-porous and washable floors or floor covering to enable regular disinfection.

(iii) If the CACI is used in the compounding of high-risk hazardous preparations, the CACI shall be placed in an area or room with at least ISO 8 quality air so that high-risk powders, weighed in at least ISO-8 air quality conditions, are not exposed to lesser air quality prior to the completion of compounding and packaging of the high-risk preparation.

(8) Additional Equipment and Supplies. Pharmacies compounding sterile preparations shall have the following equipment and supplies:

(A) a calibrated system or device (i.e., thermometer) to monitor the temperature to ensure that proper storage requirements are met, if sterile preparations are stored in the refrigerator;

(B) a calibrated system or device to monitor the temperature where bulk chemicals are stored;

(C) a temperature-sensing mechanism suitably placed in the controlled temperature storage space to reflect accurately the true temperature;

(D) if applicable, a Class A prescription balance, or analytical balance and weights. Such balance shall be properly maintained and subject to periodic inspection by the Texas State Board of Pharmacy;

(E) equipment and utensils necessary for the proper compounding of sterile preparations. Such equipment and utensils used in the compounding process shall be:

(i) of appropriate design, appropriate capacity, and be operated within designed operational limits;

(ii) of suitable composition so that surfaces that contact components, in-process material, or drug products shall not be reactive, additive, or absorptive so as to alter the safety, identity, strength, quality, or purity of the drug preparation beyond the desired result;

(iii) cleaned and sanitized immediately prior to and after each use; and

(iv) routinely inspected, calibrated (if necessary), or checked to ensure proper performance;

(F) appropriate disposal containers for used needles, syringes, etc., and if applicable, hazardous waste from the preparation of hazardous drugs and/or biohazardous waste;

(G) appropriate packaging or delivery containers to maintain proper storage conditions for sterile preparations;

(H) infusion devices, if applicable; and

(I) all necessary supplies, including:

(i) disposable needles, syringes, and other supplies for aseptic mixing;

(ii) disinfectant cleaning solutions;

(iii) sterile 70% isopropyl alcohol;

(iv) sterile gloves, both for hazardous and non-hazardous drug compounding;

(v) sterile alcohol-based or water-less alcohol based surgical scrub;

(vi) hand washing agents with bactericidal action;

(vii) disposable, lint free towels or wipes;

(viii) appropriate filters and filtration equipment;

(ix) hazardous spill kits, if applicable; and

(x) masks, caps, coveralls or gowns with tight cuffs, shoe covers, and gloves, as applicable.

(9) Labeling.

(A) Prescription drug or medication orders. In addition to the labeling requirements for the pharmacy's specific license classification, the label dispensed or distributed pursuant to a prescription drug or medication order shall contain the following:

(i) the generic name(s) or the official name(s) of the principal active ingredient(s) of the compounded sterile preparation;

(ii) for outpatient prescription orders other than sterile radiopharmaceuticals, a statement that the compounded sterile preparation has been compounded by the pharmacy. (An auxiliary label may be used on the container to meet this requirement);

(iii) a beyond-use date. The beyond-use date shall be determined as outlined in Chapter 797, Pharmacy Compounding--Sterile Preparations of the USP/NF, and paragraph (7)(G) of this subsection;

(B) Batch. If the sterile preparation is compounded in a batch, the following shall also be included on the batch label:

(i) unique lot number assigned to the batch;

(ii) quantity;

(iii) appropriate ancillary instructions, such as storage instructions or cautionary statements, including hazardous drug warning labels where appropriate; and

(iv) device-specific instructions, where appropriate.

(C) Pharmacy bulk package. The label of a pharmacy bulk package shall:

(i) state prominently "Pharmacy Bulk Package--Not for Direct Infusion;"

(ii) contain or refer to information on proper techniques to help ensure safe use of the preparation; and

(iii) bear a statement limiting the time frame in which the container may be used once it has been entered, provided it is held under the labeled storage conditions.

(10) Written drug information for prescription drug orders only. Written information about the compounded preparation or its major active ingredient(s) shall be given to the patient at the time of dispensing a prescription drug order. A statement which indicates that the preparation was compounded by the pharmacy must be included in this written information. If there is no written information available, the patient shall be advised that the drug has been compounded and how to contact a pharmacist, and if appropriate, the prescriber, concerning the drug. This paragraph does not apply to the preparation of radiopharmaceuticals.

(11) Pharmaceutical Care Services. In addition to the pharmaceutical care requirements for the pharmacy's specific license classification, the following requirements for sterile preparations compounded pursuant to prescription drug orders must be met. This paragraph does not apply to the preparation of radiopharmaceuticals.

(A) Primary provider. There shall be a designated physician primarily responsible for the patient's medical care. There shall be a clear understanding between the physician, the patient, and the pharmacy of the responsibilities of each in the areas of the delivery of care, and the monitoring of the patient. This shall be documented in the patient medication record (PMR).

(B) Patient training. The pharmacist-in-charge shall develop policies to ensure that the patient and/or patient's caregiver receives information regarding drugs and their safe and appropriate use, including instruction when applicable, regarding:

(i) appropriate disposition of hazardous solutions and ancillary supplies;

(ii) proper disposition of controlled substances in the home;

(iii) self-administration of drugs, where appropriate;

(iv) emergency procedures, including how to contact an appropriate individual in the event of problems or emergencies related to drug therapy; and

(v) if the patient or patient's caregiver prepares sterile preparations in the home, the following additional information shall be provided:

(I) safeguards against microbial contamination, including aseptic techniques for compounding intravenous admixtures and aseptic techniques for injecting additives to premixed intravenous solutions;

(II) appropriate storage methods, including storage durations for sterile pharmaceuticals and expirations of self-mixed solutions;

(III) handling and disposition of premixed and self-mixed intravenous admixtures; and

(IV) proper disposition of intravenous admixture compounding supplies such as syringes, vials, ampules, and intravenous solution containers.

(C) Pharmacist-patient relationship. It is imperative that a pharmacist-patient relationship be established and maintained throughout the patient's course of therapy. This shall be documented in the patient's medication record (PMR).

(D) Patient monitoring. The pharmacist-in-charge shall develop policies to ensure that:

(i) the patient's response to drug therapy is monitored and conveyed to the appropriate health care provider;

(ii) the first dose of any new drug therapy is administered in the presence of an individual qualified to monitor for and respond to adverse drug reactions; and

(iii) reports of adverse events with a compounded sterile preparation are reviewed promptly and thoroughly to correct and prevent future occurrences.

(12) Drugs, components, and materials used in sterile compounding.

(A) Drugs used in sterile compounding shall be a USP/NF grade substances manufactured in an FDA-registered facility.

(B) If USP/NF grade substances are not available shall be of a chemical grade in one of the following categories:

(i) Chemically Pure (CP);

(ii) Analytical Reagent (AR);

(iii) American Chemical Society (ACS); or

(iv) Food Chemical Codex.

(C) If a drug, component or material is not purchased from a FDA-registered facility, the pharmacist shall establish purity and stability by obtaining a Certificate of Analysis from the supplier and the pharmacist shall compare the monograph of drugs in a similar class to the Certificate of Analysis.

(D) All components shall:

(i) be manufactured in an FDA-registered facility; or

(ii) in the professional judgment of the pharmacist, be of high quality and obtained from acceptable and reliable alternative sources; and

(iii) stored in properly labeled containers in a clean, dry area, under proper temperatures.

(E) Drug preparation containers and closures shall not be reactive, additive, or absorptive so as to alter the safety, identity, strength, quality, or purity of the compounded drug preparation beyond the desired result.

(F) Components, drug preparation containers, and closures shall be rotated so that the oldest stock is used first.

(G) Container closure systems shall provide adequate protection against foreseeable external factors in storage and use that can cause deterioration or contamination of the compounded drug preparation.

(H) A pharmacy may not compound a preparation that contains ingredients appearing on a federal Food and Drug Administration list of drug products withdrawn or removed from the market for safety reasons.

(13) Compounding process.

(A) Standard operating procedures (SOPs). All significant procedures performed in the compounding area shall be covered by written SOPs designed to ensure accountability, accuracy, quality, safety, and uniformity in the compounding process. At a minimum, SOPs shall be developed and implemented for:

(i) the facility;

(ii) equipment;

(iii) personnel;

(iv) preparation evaluation;

(v) quality assurance;

(vi) preparation recall;

(vii) packaging; and

(viii) storage of compounded sterile preparations.

(B) USP/NF. Any compounded formulation with an official monograph in the USP/NF shall be compounded, labeled, and packaged in conformity with the USP/NF monograph for the drug.

(C) Personnel Cleansing and Garbing.

(i) Any person with an apparent illness or open lesion, including rashes, sunburn, weeping sores, conjunctivitis, and active respiratory infection, that may adversely affect the safety or quality of a drug preparation being compounded shall be excluded from working in ISO Class 5, ISO Class 7, and ISO Class 8 compounding areas until the condition is remedied.

(ii) Before entering the buffer area, compounding personnel must remove the following:

(I) personal outer garments (e.g., bandanas, coats, hats, jackets, scarves, sweaters, vests);

(II) all cosmetics, because they shed flakes and particles; and

(III) all hand, wrist, and other body jewelry or piercings (e.g., earrings, lip or eyebrow piercings) that can interfere with the effectiveness of personal protective equipment (e.g., fit of gloves and cuffs of sleeves).

(iii) The wearing of artificial nails or extenders is prohibited while working in the sterile compounding environment. Natural nails shall be kept neat and trimmed.

(iv) Personnel shall don personal protective equipment and perform hand hygiene in an order that proceeds from the dirtiest to the cleanest activities as follows:

(I) Activities considered the dirtiest include donning of dedicated shoes or shoe covers, head and facial hair covers (e.g., beard covers in addition to face masks), and face mask/eye shield. Eye shields are optional unless working with irritants like germicidal disinfecting agents or when preparing hazardous drugs.

(II) After donning dedicated shoes or shoe covers, head and facial hair covers, and face masks, personnel shall perform a hand hygiene procedure by removing debris from underneath fingernails using a nail cleaner under running warm water followed by vigorous hand washing. Personnel shall begin washing arms at the hands and continue washing to elbows for at least 30 seconds with either a plain (non-antimicrobial) soap, or antimicrobial soap, and water while in the ante-area. Hands and forearms to the elbows shall be completely dried using lint-free disposable towels, an electronic hands-free hand dryer, or a HEPA filtered hand dryer.

(III) After completion of hand washing, personnel shall don clean non-shedding gowns with sleeves that fit snugly around the wrists and enclosed at the neck.

(IV) Once inside the buffer area or segregated compounding area, and prior to donning sterile powder-free gloves, antiseptic hand cleansing shall be performed using a waterless alcohol-based surgical hand scrub with persistent activity following manufacturers' recommendations. Hands shall be allowed to dry thoroughly before donning sterile gloves.

(V) Sterile gloves that form a continuous barrier with the gown shall be the last item donned before compounding begins. Sterile gloves shall be donned using proper technique to ensure the sterility of the glove is not compromised while donning. The cuff of the sterile glove shall cover the cuff of the gown at the wrist. When preparing hazardous preparations, the compounder shall double glove or shall use single gloves ensuring that the gloves are sterile powder-free chemotherapy-rated gloves. Routine application of sterile 70% IPA shall occur throughout the compounding day and whenever non-sterile surfaces are touched.

(v) When compounding personnel shall temporarily exit the buffer area during a work shift, the exterior gown, if not visibly soiled, may be removed and retained in the ante-area, to be re-donned during that same work shift only. However, shoe covers, hair and facial hair covers, face mask/eye shield, and gloves shall be replaced with new ones before re-entering the buffer area along with performing proper hand hygiene.

(vi) During high-risk compounding activities that precede terminal sterilization, such as weighing and mixing of non-sterile ingredients, compounding personnel shall be garbed and gloved the same as when performing compounding in an ISO Class 5 environment. Properly garbed and gloved compounding personnel who are exposed to air quality that is either known or suspected to be worse than ISO Class 7 shall re-garb personal protective equipment along with washing their hands properly, performing antiseptic hand cleansing with a sterile 70% IPA-based or another suitable sterile alcohol-based surgical hand scrub, and donning sterile gloves upon re-entering the ISO Class 7 buffer area.

(vii) When compounding aseptic isolators or compounding aseptic containment isolators are the source of the ISO Class 5 environment, at the start of each new compounding procedure, a new pair of sterile gloves shall be donned within the CAI or CACI. In addition, the compounding personnel should follow the requirements as specified in this subparagraph, unless the isolator manufacturer can provide written documentation based on validated environmental testing that any components of personal protective equipment or cleansing are not required.

(14) Quality Assurance.

(A) Initial Formula Validation. Prior to routine compounding of a sterile preparation, a pharmacy shall conduct an evaluation that shows that the pharmacy is capable of compounding a preparation that is sterile and that contains the stated amount of active ingredient(s).

(i) Low risk preparations.

(I) Quality assurance practices include, but are not limited to the following:

(-a-) Routine disinfection and air quality testing of the direct compounding environment to minimize microbial surface contamination and maintain ISO Class 5 air quality.

(-b-) Visual confirmation that compounding personnel are properly donning and wearing appropriate items and types of protective garments and goggles.

(-c-) Review of all orders and packages of ingredients to ensure that the correct identity and amounts of ingredients were compounded.

(-d-) Visual inspection of compounded sterile preparations, except for sterile radiopharmaceuticals, to ensure the absence of particulate matter in solutions, the absence of leakage from vials and bags, and the accuracy and thoroughness of labeling.

(II) Example of a Media-Fill Test Procedure. This, or an equivalent test, is performed at least annually by each person authorized to compound in a low-risk level under conditions

that closely simulate the most challenging or stressful conditions encountered during compounding of low-risk level sterile preparations. Once begun, this test is completed without interruption within an ISO Class 5 air quality environment. Three sets of four 5-milliliter aliquots of sterile Soybean-Casein Digest Medium are transferred with the same sterile 10-milliliter syringe and vented needle combination into separate sealed, empty, sterile 30-milliliter clear vials (i.e., four 5-milliliter aliquots into each of three 30-milliliter vials). Sterile adhesive seals are aseptically affixed to the rubber closures on the three filled vials. The vials are incubated within a range of 20 - 35 degrees Celsius for a minimum of 14 days. Failure is indicated by visible turbidity in the medium on or before 14 days. The media-fill test must include a positive-control sample.

(ii) Medium risk preparations.

(I) Quality assurance procedures for medium-risk level compounded sterile preparations include all those for low-risk level compounded sterile preparations, as well as a more challenging media-fill test passed annually, or more frequently.

(II) Example of a Media-Fill Test Procedure. This, or an equivalent test, is performed at least annually under conditions that closely simulate the most challenging or stressful conditions encountered during compounding. This test is completed without interruption within an ISO Class 5 air quality environment. Six 100-milliliter aliquots of sterile Soybean-Casein Digest Medium are aseptically transferred by gravity through separate tubing sets into separate evacuated sterile containers. The six containers are then arranged as three pairs, and a sterile 10-milliliter syringe and 18-gauge needle combination is used to exchange two 5-milliliter aliquots of medium from one container to the other container in the pair. For example, after a 5-milliliter aliquot from the first container is added to the second container in the pair, the second container is agitated for 10 seconds, then a 5-milliliter aliquot is removed and returned to the first container in the pair. The first container is then agitated for 10 seconds, and the next 5-milliliter aliquot is transferred from it back to the second container in the pair. Following the two 5-milliliter aliquot exchanges in each pair of containers, a 5-milliliter aliquot of medium from each container is aseptically injected into a sealed, empty, sterile 10-milliliter clear vial, using a sterile 10-milliliter syringe and vented needle. Sterile adhesive seals are aseptically affixed to the rubber closures on the three filled vials. The vials are incubated within a range of 20 - 35 degrees Celsius for a minimum of 14 days. Failure is indicated by visible turbidity in the medium on or before 14 days. The media-fill test must include a positive-control sample.

(iii) High risk preparations.

(I) Procedures for high-risk level compounded sterile preparations include all those for low-risk level compounded sterile preparations. In addition, a media-fill test that represents high-risk level compounding is performed twice a year by each person authorized to compound high-risk level compounded sterile preparations.

(II) Example of a Media-Fill Test Procedure Compounded Sterile Preparations Sterilized by Filtration. This test, or an equivalent test, is performed under conditions that closely simulate the most challenging or stressful conditions encountered when compounding high-risk level compounded sterile preparations. Note: Sterility tests for autoclaved compounded sterile preparations are not required unless they are prepared in batches of more than 25 units. This test is completed without interruption in the following sequence:

(-a-) Dissolve 3 grams of non-sterile commercially available Soybean-Casein Digest Medium in 100 milliliters of non-bacteriostatic water to make a 3% non-sterile solution.

(-b-) Draw 25 milliliters of the medium into each of three 30-milliliter sterile syringes. Transfer 5 milliliters from each syringe into separate sterile 10-milliliter vials. These vials are the positive controls to generate exponential microbial growth, which is indicated by visible turbidity upon incubation.

(-c-) Under aseptic conditions and using aseptic techniques, affix a sterile 0.2-micron porosity filter unit and a 20-gauge needle to each syringe. Inject the next 10 milliliters from each syringe into three separate 10-milliliter sterile vials. Repeat the process for three more vials. Label all vials, affix sterile adhesive seals to the closure of the nine vials, and incubate them at 20 to 35 degrees Celsius for a minimum of 14 days. Inspect for microbial growth over 14 days as described in Chapter 797 Pharmaceutical Compounding--Sterile Preparations, of the USP/NF.

(III) Filter Integrity Testing. Filters need to undergo testing to evaluate the integrity of filters used to sterilize high-risk preparations, such as Bubble Point Testing or comparable filter integrity testing. Such testing is not a replacement for sterility testing and shall not be interpreted as such. Such test shall be performed after a sterilization procedure on all filters used to sterilize each high-risk preparation or batch preparation and the results documented. The results should be compared with the filter manufacturer's specification for the specific filter used. If a filter fails the integrity test, the preparation or batch must be sterilized again using new unused filters.

(B) Finished preparation release checks and tests.

(i) All high-risk level compounded sterile preparations that are prepared in groups of more than 25 identical individual single-dose packages (such as ampuls, bags, syringes, and vials), or in multiple dose vials for administration to multiple patients, or are exposed longer than 12 hours at 2 - 8 degrees Celsius and longer than six hours at warmer than 8 degrees Celsius before they are sterilized shall be tested to ensure they are sterile and do not contain excessive bacterial endotoxins as specified in Chapter 71, Sterility Tests of the USP/NF before being dispensed or administered.

(ii) All compounded sterile preparations, except for sterile radiopharmaceuticals, that are intended to be solutions must be visually examined for the presence of particulate matter and not administered or dispensed when such matter is observed.

(iii) The prescription drug and medication orders, written compounding procedure, preparation records, and expended materials used to make compounded sterile preparations at all contamination risk levels shall be inspected for accuracy of correct identities and amounts of ingredients, aseptic mixing and sterilization, packaging, labeling, and expected physical appearance before they are dispensed or administered.

(iv) Written procedures for checking compounding accuracy shall be followed for every compounded sterile preparation during preparation, in accordance with pharmacy's policies and procedures, and immediately prior to release, including label accuracy and the accuracy of the addition of all drug products or ingredients used to prepare the finished preparation and their volumes or quantities. A pharmacist shall ensure that components used in compounding are accurately weighed, measured, or subdivided as appropriate to conform to the formula being prepared.

(C) Environmental Testing.

(i) Viable and nonviable environmental sampling testing. Environmental sampling shall occur, at a minimum, every six months as part of a comprehensive quality management program and under any of the following conditions:

(I) as part of the commissioning and certification of new facilities and equipment;

(II) following any servicing of facilities and equipment;

(III) as part of the re-certification of facilities and equipment;

(IV) in response to identified problems with end products or staff technique; or

(V) in response to issues with compounded sterile preparations, observed compounding personnel work practices, or patient-related infections (where the compounded sterile preparation is being considered as a potential source of the infection).

(ii) Total particle counts. Certification that each ISO classified area (e.g., ISO Class 5, 7, and 8), is within established guidelines shall be performed no less than every six months and whenever the equipment is relocated or the physical structure of the buffer area or ante-area has been altered. All certification records shall be maintained and reviewed to ensure that the controlled environments comply with the proper air cleanliness, room pressures, and air changes per hour. Testing shall be performed by qualified operators using current, state-of-the-art equipment, with results of the following:

(I) ISO Class 5 - not more than 3520 particles 0.5 micrometer and larger size per cubic meter of air;

(II) ISO Class 7 - not more than 352,000 particles of 0.5 micrometer and larger size per cubic meter of air for any buffer area; and

(III) ISO Class 8 - not more than 3,520,000 particles of 0.5 micrometer and larger size per cubic meter of air for any ante-area.

(iii) Pressure differential monitoring. A pressure gauge or velocity meter shall be installed to monitor the pressure differential or airflow between the buffer area and the ante-area and between the ante-area and the general environment outside the compounding area. The results shall be reviewed and documented on a log at least every work shift (minimum frequency shall be at least daily) or by a continuous recording device. The pressure between the ISO Class 7 or ISO Class 8 and the general pharmacy area shall not be less than 0.02 inch water column.

(iv) Sampling plan. An appropriate environmental sampling plan shall be developed for airborne viable particles based on a risk assessment of compounding activities performed. Selected sampling sites shall include locations within each ISO Class 5 environment and in the ISO Class 7 and 8 areas and in the segregated compounding areas at greatest risk of contamination. The plan shall include sample location, method of collection, frequency of sampling, volume of air sampled, and time of day as related to activity in the compounding area and action levels.

(v) Viable air sampling. Evaluation of airborne microorganisms using volumetric collection methods in the controlled air environments shall be performed by properly trained individuals for all compounding risk levels. For low-, medium-, and high-risk level compounding, air sampling shall be performed at locations that are prone to contamination during compounding activities and during other activities such as staging, labeling, gowning, and cleaning. Locations shall include zones of air backwash turbulence within the laminar airflow workbench and other areas where air backwash turbulence may enter the compounding area. For low-risk level compounded sterile preparations within 12-hour or less beyond-use-date prepared in a primary engineering control that maintains an ISO Class 5, air sampling shall be performed at locations inside the ISO Class 5 environment and other areas that are in close proximity to the ISO Class 5 environment during the certification of the primary engineering control.

(vi) Air sampling frequency and process. Air sampling shall be performed at least every 6 months as a part of the re-certification of facilities and equipment. A sufficient volume of air shall be sampled and the manufacturer's guidelines for use of the electronic air sampling equipment followed. At the end of the designated sampling or exposure period for air sampling activities, the microbial growth media plates are recovered and their covers secured and they are inverted and incubated at a temperature and for a time period conducive to multiplication of microorganisms. Sampling data shall be collected and reviewed on a periodic basis as a means of evaluating the overall control of the compounding environment. If an activity consistently shows elevated levels of microbial growth, competent microbiology personnel shall be consulted.

(vii) Compounding accuracy checks. Written procedures for checking compounding accuracy shall be followed for every compounded sterile preparation during preparation and immediately prior to release, including label accuracy and the accuracy of the addition of all drug products or ingredients used to prepare the finished preparation and their volumes or quantities. At each step of the compounding process, the pharmacist shall ensure that components used in compounding are accurately weighed, measured, or subdivided as appropriate to conform to the formula being prepared.

(15) Quality control.

(A) Quality control procedures. The pharmacy shall follow established quality control procedures to monitor the compounding environment and quality of compounded drug preparations for conformity with the quality indicators established for the preparation. When developing these procedures, pharmacy personnel shall consider the provisions of USP Chapter 71, Sterility Tests, USP Chapter 85, Bacterial Endotoxins Test, Pharmaceutical Compounding-Non-sterile Preparations, USP Chapter 795, USP Chapter 797, Pharmaceutical Compounding--Sterile Preparations, USP Chapter 800, Hazardous Drugs--Handling in Healthcare Settings, USP Chapter 823, Positron Emission Tomography Drugs for Compounding, Investigational, and Research Uses, USP Chapter 1160, Pharmaceutical Calculations in Prescription Compounding, and USP Chapter 1163, Quality Assurance in Pharmaceutical Compounding of the current USP/NF. Such procedures shall be documented and be available for inspection.

(B) Verification of compounding accuracy and sterility.

(i) The accuracy of identities, concentrations, amounts, and purities of ingredients in compounded sterile preparations shall be confirmed by reviewing labels on packages, observing and documenting correct measurements with approved and correctly standardized devices, and reviewing information in labeling and certificates of analysis provided by suppliers.

(ii) If the correct identity, purity, strength, and sterility of ingredients and components of compounded sterile preparations cannot be confirmed such ingredients and components shall be discarded immediately. Any compounded sterile preparation that fails sterility testing following sterilization by one method (e.g., filtration) is to be discarded and not subjected to a second method of sterilization.

(iii) If individual ingredients, such as bulk drug substances, are not labeled with expiration dates, when the drug substances are stable indefinitely in their commercial packages under labeled storage conditions, such ingredients may gain or lose moisture during storage and use and shall require testing to determine the correct amount to

weigh for accurate content of active chemical moieties in compounded sterile preparations.

(e) Records. Any testing, cleaning, procedures, or other activities required in this subsection shall be documented and such documentation shall be maintained by the pharmacy.

(1) Maintenance of records. Every record required under this section must be:

(A) kept by the pharmacy and be available, for at least two years for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies; and

(B) supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy. If the pharmacy maintains the records in an electronic format, the requested records must be provided in an electronic format. Failure to provide the records set out in this section, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(2) Compounding records.

(A) Compounding pursuant to patient specific prescription drug orders. Compounding records for all compounded preparations shall be maintained by the pharmacy electronically or manually as part of the prescription drug or medication order, formula record, formula book, or compounding log and shall include:

(i) the date and time of preparation;

(ii) a complete formula, including methodology and necessary equipment which includes the brand name(s) of the raw materials, or if no brand name, the generic name(s) or official name and name(s) of the manufacturer(s) or distributor of the raw materials and the quantities of each;

(iii) written or electronic signature or initials of the pharmacist or pharmacy technician or pharmacy technician trainee performing the compounding;

(iv) written or electronic signature or initials of the pharmacist responsible for supervising pharmacy technicians or pharmacy technician trainees and conducting finals checks of compounded pharmaceuticals if pharmacy technicians or pharmacy technician trainees perform the compounding function;

(v) the quantity in units of finished preparation or amount of raw materials;

(vi) the container used and the number of units prepared; and

(vii) a reference to the location of the following documentation which may be maintained with other records, such as quality control records:

(I) the criteria used to determine the beyond-use date; and

(II) documentation of performance of quality control procedures.

(B) Compounding records when batch compounding or compounding in anticipation of future prescription drug or medication orders.

(i) Master work sheet. A master work sheet shall be developed and approved by a pharmacist for preparations prepared in batch. Once approved, a duplicate of the master work sheet shall be used as the preparation work sheet from which each batch is prepared and on which all documentation for that batch occurs. The master work sheet shall contain at a minimum:

(I) the formula;

(II) the components;

(III) the compounding directions;

(IV) a sample label;

(V) evaluation and testing requirements;

(VI) specific equipment used during preparation; and

(VII) storage requirements.

(ii) Preparation work sheet. The preparation work sheet for each batch of preparations shall document the following:

(I) identity of all solutions and ingredients and their corresponding amounts, concentrations, or volumes;

(II) lot number for each component;

(III) component manufacturer/distributor or suitable identifying number;

(IV) container specifications (e.g., syringe, pump cassette);

(V) unique lot or control number assigned to batch;

(VI) expiration date of batch-prepared preparations;

(VII) date of preparation;

(VIII) name, initials, or electronic signature of the person(s) involved in the preparation;

(IX) name, initials, or electronic signature of the responsible pharmacist;

(X) finished preparation evaluation and testing specifications, if applicable; and

(XI) comparison of actual yield to anticipated or theoretical yield, when appropriate.

(f) Office Use Compounding and Distribution of Sterile Compounded Preparations

(1) General.

(A) A pharmacy may compound, dispense, deliver, and distribute a compounded sterile preparation as specified in Subchapter D, Texas Pharmacy Act Chapter 562.

(B) A Class A-S pharmacy is not required to register or be licensed under Chapter 431, Health and Safety Code, to distribute sterile compounded preparations to a Class C or Class C-S pharmacy.

(C) A Class C-S pharmacy is not required to register or be licensed under Chapter 431, Health and Safety Code, to distribute sterile compounded preparations that the Class C-S pharmacy has compounded for other Class C or Class C-S pharmacies under common ownership.

(D) To compound and deliver a compounded preparation under this subsection, a pharmacy must:

(i) verify the source of the raw materials to be used in a compounded drug;

(ii) comply with applicable United States Pharmacopoeia guidelines, including the testing requirements, and the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191);

(iii) enter into a written agreement with a practitioner for the practitioner's office use of a compounded preparation;

(iv) comply with all applicable competency and accrediting standards as determined by the board; and

(v) comply with the provisions of this subsection.

(E) This subsection does not apply to Class B pharmacies compounding sterile radiopharmaceuticals that are furnished for departmental or physicians' use if such authorized users maintain a Texas radioactive materials license.

(2) Written Agreement. A pharmacy that provides sterile compounded preparations to practitioners for office use or to another pharmacy shall enter into a written agreement with the practitioner or pharmacy. The written agreement shall:

(A) address acceptable standards of practice for a compounding pharmacy and a practitioner and receiving pharmacy that enter into the agreement including a statement that the compounded drugs may only be administered to the patient and may not be dispensed to the patient or sold to any other person or entity except to a veterinarian as authorized by §563.054 of the Act;

(B) require the practitioner or receiving pharmacy to include on a patient's chart, medication order or medication administration record the lot number and beyond-use date of a compounded preparation administered to a patient;

(C) describe the scope of services to be performed by the pharmacy and practitioner or receiving pharmacy, including a statement of the process for:

(i) a patient to report an adverse reaction or submit a complaint; and

(ii) the pharmacy to recall batches of compounded preparations.

(3) Recordkeeping.

(A) Maintenance of Records.

(i) Records of orders and distribution of sterile compounded preparations to a practitioner for office use or to an institutional pharmacy for administration to a patient shall:

(I) be kept by the pharmacy and be available, for at least two years from the date of the record, for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies;

(II) maintained separately from the records of preparations dispensed pursuant to a prescription or medication order; and

(III) supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy or its representative. If the pharmacy maintains the records in an electronic format, the requested records must be provided in an electronic format. Failure to provide the records set out in this subsection, either on site or within 72 hours for whatever reason, constitutes prima facie evidence of failure to keep and maintain records.

(ii) Records may be maintained in an alternative data retention system, such as a data processing system or direct imaging system provided the data processing system is capable of producing a hard copy of the record upon the request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies.

(B) Orders. The pharmacy shall maintain a record of all sterile compounded preparations ordered by a practitioner for office use or by an institutional pharmacy for administration to a patient. The record shall include the following information:

(i) date of the order;

(ii) name, address, and phone number of the practitioner who ordered the preparation and if applicable, the name, address and phone number of the institutional pharmacy ordering the preparation; and

(iii) name, strength, and quantity of the preparation ordered.

(C) Distributions. The pharmacy shall maintain a record of all sterile compounded preparations distributed pursuant to an order to a practitioner for office use or by an institutional pharmacy for administration to a patient. The record shall include the following information:

(i) date the preparation was compounded;

(ii) date the preparation was distributed;

(iii) name, strength and quantity in each container of the preparation;

(iv) pharmacy's lot number;

(v) quantity of containers shipped; and

(vi) name, address, and phone number of the practitioner or institutional pharmacy to whom the preparation is distributed.

(D) Audit Trail.

(i) The pharmacy shall store the order and distribution records of preparations for all sterile compounded preparations ordered by and or distributed to a practitioner for office use or by a pharmacy licensed to compound sterile preparations for administration to a patient in such a manner as to be able to provide an audit trail for all orders and distributions of any of the following during a specified time period:

(I) any strength and dosage form of a preparation (by either brand or generic name or both);

(II) any ingredient;

(III) any lot number;

(IV) any practitioner;

(V) any facility; and

(VI) any pharmacy, if applicable.

(ii) The audit trail shall contain the following information:

(I) date of order and date of the distribution;

(II) practitioner's name, address, and name of the institutional pharmacy, if applicable;

(III) name, strength and quantity of the preparation in each container of the preparation;

(IV) name and quantity of each active ingredient;

(V) quantity of containers distributed; and

(VI) pharmacy's lot number.

(4) Labeling. The pharmacy shall affix a label to the preparation containing the following information:

(A) name, address, and phone number of the compounding pharmacy;

(B) the statement: "For Institutional or Office Use Only--Not for Resale"; or if the preparation is distributed to a veterinarian the statement: "Compounded Preparation";

(C) name and strength of the preparation or list of the active ingredients and strengths;

(D) pharmacy's lot number;

(E) beyond-use date as determined by the pharmacist using appropriate documented criteria;

(F) quantity or amount in the container;

(G) appropriate ancillary instructions, such as storage instructions or cautionary statements, including hazardous drug warning labels where appropriate; and

(H) device-specific instructions, where appropriate.

(g) Recall Procedures.

(1) The pharmacy shall have written procedures for the recall of any compounded sterile preparation provided to a patient, to a practitioner for office use, or a pharmacy for administration. Written procedures shall include, but not be limited to the requirements as specified in paragraph (3) of this subsection.

(2) The pharmacy shall immediately initiate a recall of any sterile preparation compounded by the pharmacy upon identification of a potential or confirmed harm to a patient.

(3) In the event of a recall, the pharmacist-in-charge shall ensure that:

(A) each practitioner, facility, and/or pharmacy to which the preparation was distributed is notified, in writing, of the recall;

(B) each patient to whom the preparation was dispensed is notified, in writing, of the recall;

(C) the board is notified of the recall, in writing, not later than 24 hours after the recall is issued;

(D) if the preparation is distributed for office use, the Texas Department of State Health Services, Drugs and Medical Devices Group, is notified of the recall, in writing;

(E) the preparation is quarantined; and

(F) the pharmacy keeps a written record of the recall including all actions taken to notify all parties and steps taken to ensure corrective measures.

(4) If a pharmacy fails to initiate a recall, the board may require a pharmacy to initiate a recall if there is potential for or confirmed harm to a patient.

(5) A pharmacy that compounds sterile preparations shall notify the board immediately of any adverse effects reported to the pharmacy or that are known by the pharmacy to be potentially attributable to a sterile preparation compounded by the pharmacy.

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

Filed with the Office of the Secretary of State on February 26, 2016.

TRD-201600949
Gay Dodson, R. Ph.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: April 10, 2016
For further information, please call: (512) 305-8026

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CHAPTER 297. PHARMACY TECHNICIANS AND PHARMACY TECHNICIAN TRAINEES

22 TAC §297.3, §297.10

The Texas State Board of Pharmacy proposes amendments to §297.3, concerning Registration Requirements, and §297.10, concerning Registration for Military Service Members, Military Veterans, and Military Spouses. The amendments, if adopted, eliminate the provisions allowing individuals who are unable to obtain a social security number to provide an individual taxpayer identification number in lieu of a social security number because a social security number is required in order to process criminal background checks.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rules will be in effect, the public benefit anticipated as a result of enforcing the amendments will ensure individuals applying for a pharmacy technician registration meet the requirements in order to conduct criminal background checks. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with these sections.

Written comments on the amendments may be submitted to Allison Vordenbaumen Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-6778. Comments must be received by 5 p.m., April 25, 2016.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§297.3. Registration Requirements.

(a) General.

(1) Individuals who are not registered with the Board may not be employed as or perform the duties of a pharmacy technician or pharmacy technician trainee.

(2) Individuals who have previously applied and registered as a pharmacy technician, regardless of the pharmacy technician's current registration status, may not register as a pharmacy technician trainee.

(3) Individuals who apply and are qualified for both a pharmacy technician trainee registration and a pharmacy technician registration concurrently will not be considered for a pharmacy technician trainee registration.

(b) Registration for pharmacy technician trainees. An individual may register as a pharmacy technician trainee only once and the registration may not be renewed.

(1) Each applicant for pharmacy technician trainee registration shall:

(A) have a high school or equivalent diploma (e.g., GED), or be working to achieve a high school or equivalent diploma. For the purposes of this subparagraph, an applicant for registration may be working to achieve a high school or equivalent diploma for no more than two years;

(B) complete the Texas application for registration that includes the following information:

(i) name;

(ii) addresses, phone numbers, date of birth, and social security number; [~~however, if an individual is unable to obtain a social security number, an individual taxpayer identification number may be provided in lieu of a social security number along with documentation indicating why the individual is unable to obtain a social security number;~~] and

(iii) any other information requested on the application.

(C) meet all requirements necessary in order for the Board to access the criminal history record information, including submitting fingerprint information and paying the required fees.

(2) Once an applicant has successfully completed all requirements of registration, and the board has determined there are no grounds to refuse registration, the applicant will be notified of registration as a pharmacy technician trainee and of his or her pharmacy technician trainee registration number.

(3) Pharmacy technician trainee registrations expire two years from the date of registration or upon issuance of registration as a registered pharmacy technician, whichever is earlier.

(c) Initial registration for pharmacy technicians.

(1) Each applicant for pharmacy technician registration shall:

(A) have a high school or equivalent diploma (e.g., GED), or be working to achieve a high school or equivalent diploma. For the purpose of this clause, an applicant for registration may be working to achieve a high school or equivalent diploma for no more than two years; and

(B) either have:

(i) taken and passed the Pharmacy Technician Certification Board's National Pharmacy Technician Certification Examination or other examination approved by the board and have a current certification certificate; or

(ii) been granted an exemption from certification by the board as specified in §297.7 of this title (relating to Exemption from Pharmacy Technician Certification Requirements); and

(C) complete the Texas application for registration that includes the following information:

(i) name;

(ii) addresses, phone numbers, date of birth, and social security number; [~~however, if an individual is unable to obtain a social security number, an individual taxpayer identification number may be provided in lieu of a social security number along with documentation indicating why the individual is unable to obtain a social security number;~~] and

(iii) any other information requested on the application.

(D) meet all requirements necessary in order for the Board to access the criminal history record information, including submitting fingerprint information and paying the required fees; and

(E) pay the registration fee specified in §297.4 of this title (relating to Fees).

(2) Once an applicant has successfully completed all requirements of registration, and the board has determined there are no grounds to refuse registration, the applicant will be notified of registration as a registered pharmacy technician and of his or her pharmacy technician registration number. If the pharmacy technician applicant was registered as a pharmacy technician trainee at the time the pharmacy technician registration issued, the pharmacy technician trainee registration expires.

(d) Renewal.

(1) All applicants for renewal of a pharmacy technician registration shall:

(A) complete the Texas application for registration that includes the following information:

(i) name;

(ii) addresses, phone numbers, date of birth, and social security number; [~~however, if an individual is unable to obtain a social security number, an individual taxpayer identification number may be provided in lieu of a social security number along with documentation indicating why the individual is unable to obtain a social security number;~~]

(iii) meet all requirements necessary in order for the Board to access the criminal history record information, including submitting fingerprint information and being responsible for all associated costs; and

(iv) any other information requested on the application.

(B) pay the renewal fee specified in §297.4 of this title; and

(C) complete 20 contact hours of continuing education per renewal period as specified in §297.8 of this title (relating to Continuing Education).

(2) A pharmacy technician registration expires on the last day of the assigned expiration month.

(3) If the completed application and renewal fee are not received in the board's office on or before the last day of the assigned expiration month, the person's pharmacy technician registration shall expire. A person shall not practice as a pharmacy technician with an expired registration.

(4) If a pharmacy technician registration has expired, the person may renew the registration by paying to the board the renewal fee and a delinquent fee that is equal to the renewal fee as specified in §297.4 of this title.

(5) If a pharmacy technician registration has expired for more than one year, the pharmacy technician may not renew the registration and must complete the requirements for initial registration as specified in subsection (c) of this section.

(6) After review, the board may determine that paragraph (5) of this subsection does not apply if the registrant is the subject of a pending investigation or disciplinary action.

(e) An individual may use the title "Registered Pharmacy Technician" or "Ph.T.R." if the individual is registered as a pharmacy technician in this state.

§297.10. Registration for Military Service Members, Military Veterans, and Military Spouses.

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

(1) Active duty--Current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, or similar military service of another state.

(2) Armed forces of the United States--The army, navy, air force, coast guard, or marine corps of the United States or a reserve unit of one of those branches of the armed forces.

(3) Military service member--A person who is on active duty.

(4) Military spouse--A person who is married to a military service member.

(5) Military veteran--A person who has served on active duty and who was discharged or released from active duty.

(b) Alternative registration procedure. For the purpose of §55.004, Occupations Code, an applicant for a pharmacy technician registration who is a military service member, military veteran, or military spouse may complete the following alternative procedures for registering as a pharmacy technician.

(1) An applicant who holds a current registration as a pharmacy technician issued by another state but does not have a current PTCB certificate shall meet the requirements for registration as a pharmacy technician trainee as specified in §297.3 of this chapter (relating to Registration Requirements).

(2) An applicant who held a pharmacy technician registration in Texas that expired within the five years preceding the application date who meets the following requirements may be granted a pharmacy technician registration. The applicant:

(A) shall complete the Texas application for registration that includes the following:

(i) name;

(ii) addresses, phone numbers, date of birth, and social security number; [~~however, if an individual is unable to obtain a social security number, an individual taxpayer identification number may be provided in lieu of a social security number along with documentation indicating why the individual is unable to obtain a social security number;~~] and

(iii) any other information requested on the application;

(B) shall provide documentation to include:

(i) military identification indicating that the applicant is a military service member, military veteran, or military dependent, if a military spouse; and

(ii) marriage certificate, if the applicant is a military spouse; applicant's spouse is on active duty status;

(C) be exempt from the application fees paid to the board set forth in §297.4(a) and (b)(2) of this chapter;

(D) shall meet all necessary requirements in order for the board to access the criminal history records information, including submitting fingerprint information and such criminal history check does not reveal any charge or conviction for a crime that §281.64 of this title (relating to Sanctions for Criminal Offenses) indicates a sanction of denial, revocation, or suspension; and

(E) is not required to have a current PTCB certificate.

(c) Expedited registration procedure. For the purpose of §55.005, Occupations Code, an applicant for a pharmacy technician registration who is a military service member, military veteran or military spouse and who holds a current registration as a pharmacy technician issued by another state or who held a pharmacy technician registration in Texas that expired within the five years preceding the application date may complete the following expedited procedures for registering as a pharmacy technician.

(1) The applicant shall:

(A) have a high school or equivalent diploma (e.g., GED), or be working to achieve a high school or equivalent diploma. For the purpose of this clause, an applicant for registration may be working to achieve a high school or equivalent diploma for no more than two years; and

(B) have taken and passed the Pharmacy Technician Certification Board's National Pharmacy Technician Certification Examination or other examination approved by the board and have a current certification certificate; and

(C) complete the Texas application for registration that includes the following information:

(i) name;

(ii) addresses, phone numbers, date of birth, and social security number; [~~however, if an individual is unable to obtain a social security number, an individual taxpayer identification number may be provided in lieu of a social security number along with documentation indicating why the individual is unable to obtain a social security number;~~] and

(iii) any other information requested on the application.

(D) meet all requirements necessary in order for the Board to access the criminal history record information, including submitting fingerprint information and paying the required fees;

(E) shall be exempt from the registration fee as specified in §297.4(b)(2) of this chapter (relating to Fees).

(2) Once an applicant has successfully completed all requirements of registration, and the board has determined there are no grounds to refuse registration, the applicant will be notified of registration as a registered pharmacy technician and of his or her pharmacy technician registration number.

(3) All applicants for renewal of an expedited pharmacy technician registration issued to a military service member, military veteran, or military spouse shall comply with the renewal procedures

as specified in §297.3 of this chapter (relating to Registration Requirements).

(d) License renewal. As specified in §55.003, Occupations Code, a military service member who holds a pharmacy technician registration is entitled to two years of additional time to complete any requirements related to the renewal of the military service member's registration as follows:

(1) A military service member who fails to renew their pharmacy technician registration in a timely manner because the individual was serving as a military service member shall submit to the board:

(A) name, address, and registration number of the pharmacy technician;

(B) military identification indicating that the individual is a military service member; and

(C) a statement requesting up to two years of additional time to complete the renewal.

(2) A military service member specified in paragraph (1) of this subsection shall be exempt from fees specified in §297.3(d)(4) of this chapter (relating to Registration Requirements).

(3) A military service member specified in paragraph (1) of this subsection is entitled to two additional years of time to complete the continuing education requirements specified in §297.8 of this title (relating to Continuing Education Requirements).

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

Filed with the Office of the Secretary of State on February 26, 2016.

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Gay Dodson, R. Ph.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: April 10, 2016
For further information, please call: (512) 305-8026

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER HH. MIXED BEVERAGE TAXES

34 TAC §3.1002

The Comptroller of Public Accounts proposes an amendment to §3.1002, concerning mixed beverage sales tax. This section implements Senate Bill 31, 84th Legislature, 2015, which added Tax Code, §151.310(c-1) to provide an exemption from sales and use tax for volunteer fire departments' fundraising sales and auctions, effective May 28, 2015. Although Senate Bill 31 did not amend Tax Code, Chapter 183, Subchapter B-1 (Mixed Beverage Sales Tax), pursuant to Tax Code, §183.043 (Applicability of Other Law), mixed beverage sales tax is administered, collected, and enforced in the same manner as the tax under Tax Code, Chapter 151 (Limited Sales, Excise, and Use Tax) is administered, collected, and enforced. Therefore, the exemption from collecting sales tax on fundraising sales or auctions for volunteer fire departments in Tax Code, §151.310(c-1) also applies to the collection of mixed beverage sales tax.

Subsection (f)(5) is amended to add language that the exemption is effective May 28, 2015, and that a previous exemption from mixed beverage sales tax at fundraising sales and auctions expired on September 1, 2014.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by conforming the rule to current state statutes. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Teresa G. Bostick, Director Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

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

The amendment implements Tax Code, §151.310 (Religious, Educational, and Public Service Organizations) and §183.043 (Applicability of Other Law).

§3.1002. Mixed Beverage Sales Tax.

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

(1) Alcoholic beverage--This term has the same meaning as assigned by §3.1001 of this title (relating to Mixed Beverage Gross Receipts Tax).

(2) Complimentary alcoholic beverage--This term has the same meaning as assigned by §3.1001 of this title.

(3) Governmental entity--An organization that is exempted from sales and use tax otherwise imposed on their purchases under Tax Code, Chapter 151 (Limited Sales, Excise, and Use Taxes), by operation of Tax Code, §151.309 (Governmental Entities).

(4) Nonprofit organization--An organization that is exempted from the sales and use tax imposed under Tax Code, Chapter 151, by operation of Tax Code, §151.310(a) (Religious, Educational, and Public Service Organizations).

(5) Permittee--This term has the same meaning as assigned by §3.1001 of this title.

(b) Mixed beverage sales tax. A tax at a rate of 8.25% is imposed on each alcoholic beverage sold, prepared, or served by a permittee, and on ice and each nonalcoholic beverage sold, prepared, or served by a permittee to be mixed with alcohol and consumed on the permittee's premises. The sales price of each item on which mixed

beverage sales tax is imposed includes, but is not limited to, those items identified in §3.1001(c) of this title. Those items identified in §3.1001(f)(1) - (7) of this title are excluded from the sales price of items on which mixed beverage sales tax is imposed. Mixed beverage sales tax is imposed in addition to the mixed beverage gross receipts tax imposed under Tax Code, Chapter 183, Subchapter B.

(c) Administration, collection, and enforcement of mixed beverage sales tax.

(1) Except as otherwise provided in this paragraph, mixed beverage sales tax is administered, collected, and enforced in the same manner as sales and use tax is administered, collected, and enforced in Tax Code, Chapter 151, except:

(A) a permittee may not deduct or withhold any amount of taxes collected as reimbursement for the cost of collecting the tax, pursuant to Tax Code, §151.423 (Reimbursement to Taxpayer for Tax Collection); and

(B) a permittee may not receive a discount for prepaying the tax, pursuant to Tax Code, §151.424 (Discount for Prepayments).

(2) Tax due is debt of the purchaser. Mixed beverage sales tax is a debt of the purchaser to the permittee until collected.

(3) Tax-included sales price. The total amount shown on a customer's sales invoice, billing, service check, ticket, or other receipt for sales that are subject to mixed beverage sales tax is presumed to be the sales price, without tax included. Contracts, bills, invoices, or other receipts that merely state that "all taxes" are included are not sufficient to relieve either the customer or the permittee of their tax responsibilities on the transaction. The permittee may overcome the presumption by using the permittee's records to show that tax was included in the sales price.

(4) Record-keeping requirements. Permittees are responsible for creating and maintaining records of purchases and sales as required by §3.1001(j) - (m) and (o) of this title.

(5) Bad debts. The exclusion of bad debts from the mixed beverage gross receipts tax base, as established in §3.1001(n) of this title, does not apply to mixed beverage sales tax. Bad debt deductions from mixed beverage sales tax are treated in the same manner as bad debt deductions from sales tax. For more information on bad debt deductions from sales tax, refer to §3.302 of this title (relating to Accounting Methods, Credit Sales, Bad Debt Refunds, Repossession Refunds, Interest on Sales Tax, and Trade-Ins).

(d) Separate tax disclosure statement.

(1) A permittee may include on a customer's sales invoice, billing, service check, ticket, or other receipt that includes an item subject to mixed beverage sales tax:

(A) a statement that mixed beverage sales tax is included in the sales price;

(B) a separate statement of the amount of mixed beverage gross receipts tax to be paid by the permittee on that sale;

(C) a separate statement of the amount of mixed beverage sales tax imposed on that item;

(D) a statement of the combined amount of mixed beverage gross receipts tax and mixed beverage sales tax to be paid on that item; or

(E) a statement of the combined amount of mixed beverage sales tax and sales and use tax imposed under Tax Code, Chapter 151, to be paid on all items listed on that sales invoice, billing, service check, ticket, or other receipt.

(2) Mixed beverage gross receipts tax cannot be charged to or paid by the customer. A receipt with a statement of the combined amount of mixed beverage gross receipts tax and mixed beverage sales tax provided in paragraph (1)(D) of this subsection must clearly show that the customer is not being charged mixed beverage gross receipts tax.

(3) For each receipt with a statement of the combined amount of mixed beverage sales tax and sales and use tax, as provided in paragraph (1)(E) of this subsection, the permittee's books and records must clearly show the amount of mixed beverage sales tax and sales and use tax on each sale of alcohol.

(4) Examples of disclosure of tax statements.
Figure: 34 TAC §3.1002(d)(4) (No change.)

(e) Complimentary beverages. A permittee owes sales and use tax, as imposed by Tax Code, Chapter 151, on the purchase of alcoholic beverages, ice, and nonalcoholic beverages that are ingredients of a complimentary alcoholic beverage or that are served or provided by the permittee, without any consideration from the customer, to be mixed with a complimentary alcoholic beverage and consumed on the permittee's premises. The permittee also owes sales and use tax on taxable items that are furnished with a complimentary alcoholic beverage, such as napkins and straws.

(f) Exemptions; governmental entities; nonprofit organizations; university and student organizations; volunteer fire departments; temporary permit.

(1) Governmental entity exempt on purchase of alcohol. A governmental entity can claim an exemption from mixed beverage sales tax on the purchase of alcohol in the same manner as a governmental entity can claim exemption from the payment of sales and use tax on the purchase of alcohol under Tax Code, §151.309.

(2) Purchase of alcohol by nonprofit organization not exempt. A nonprofit organization cannot claim an exemption from the mixed beverage sales tax on the purchase of alcohol. In addition, except as provided in this subsection, a nonprofit organization is responsible for collecting mixed beverage sales tax on the sale, preparation, or service of alcoholic beverages to the same extent that the organization is responsible for paying mixed beverage gross receipts tax on such beverages. For more information, refer to §3.1001(e) of this title.

(3) Nonprofit organizations; fundraising events.

(A) The sale, preparation, or service of alcohol is exempt from mixed beverage sales tax when sold by a nonprofit organization that qualifies for exemption from sales and use tax under Tax Code, §151.310(a)(1) or (2) during a qualifying fundraising sale or auction authorized by Tax Code, §151.310(c).

(B) Except as provided in subparagraph (A) of this paragraph, the sale, preparation, or service of alcohol by a nonprofit organization that qualifies for exemption from sales and use tax under Tax Code, §151.310(a)(1) or (2) is computed in the same manner as mixed beverage gross receipts tax is computed in §3.1001(e) of this title.

(4) University and college student organizations. The sale, preparation, or service of alcohol is exempt from mixed beverage sales tax when sold by a university or college student organization that is certified as an affiliated organization by a university or college as defined in Education Code, §61.003 (Definitions) during a sale authorized by Tax Code, §151.321 (University and College Student Organizations).

(5) Volunteer fire departments; fundraising events. The sale, preparation, or service of alcohol is exempt from mixed beverage sales tax when sold by a volunteer fire department that qualifies for exemption from sales and use tax under Tax Code, §151.310(a)(4) during a qualifying fundraising sale or auction authorized by Tax Code, §151.310(c-1). This exemption is effective May 28, 2015. A previous exemption from mixed beverage sales tax on the sale, preparation, or service of alcohol when sold by volunteer fire departments at fundraising events expired [~~expires~~] on September 1, 2014.

(6) Temporary mixed beverage permit required. Nonprofit organizations, university or college student organizations, and volunteer fire departments must hold a daily temporary mixed beverage permit or daily temporary private club permit, issued by the Texas Alcoholic Beverage Commission, in order to sell alcoholic beverages and claim an exemption from mixed beverage sales tax on those sales pursuant to paragraphs (3) - (5) of this subsection.

(7) Governmental entities and nonprofit organizations owe mixed beverage gross receipts tax. A governmental entity or nonprofit organization is not exempt from the payment of mixed beverage gross receipts tax on receipts from the sale, service, or preparation of alcoholic beverages. This includes sales of alcohol during any fundraising sale or auction. For more information, refer to §3.1001(e) of this title.

(g) Lump-sum charges that include alcoholic beverages and additional items together for a single price.

(1) Permittees shall compute mixed beverage sales tax on alcoholic beverages that are served together with meals for a single charge in the same manner as mixed beverage gross receipts tax is computed in §3.1001(c)(1)(D) of this title.

(2) Permittees shall compute mixed beverage sales tax on alcoholic beverages that are served at private clubs, special events, or functions in the same manner as mixed beverage gross receipts tax is computed in §3.1001(d) of this title.

(h) Inventory used in cooking. Alcoholic beverages used in cooking are exempt from both mixed beverage sales tax under Tax Code, Chapter 183, and sales and use tax under Tax Code, Chapter 151, provided that the permittee follows the record-keeping requirements set out in §3.1001(h) and (l) of this title.

(i) Mixed beverage sales tax reports.

(1) Due dates. Reports and remittances are due on or before the 20th day of the month following the reporting period end date. Reports and remittances due on a Saturday, Sunday, or legal holiday may be submitted on the next business day.

(2) Reporting periods.

(A) Monthly filers. Permittees who have $1,500 or more in mixed beverage sales tax per quarter to report must file monthly reports.

(B) Quarterly filers. Permittees who have less than $1,500 in mixed beverage sales tax per quarter to report may file returns quarterly. The quarterly reporting periods end on March 31, June 30, September 30, and December 31.

(3) Each permittee must file a mixed beverage sales tax report even if no sales or services of alcoholic beverages were made during the report period. The Texas Mixed Beverage Sales Tax report is due in addition to the Texas Mixed Beverage Gross Receipts Tax report to be filed under Tax Code, Chapter 183, Subchapter B, and the Texas Sales and Use Tax report required to be filed under Tax Code, Chapter 151.

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

Filed with the Office of the Secretary of State on February 26, 2016.

TRD-201600972
Don Neal
Chief Deputy General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: April 10, 2016
For further information, please call: (512) 475-0387

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER A. REGULATIONS GOVERNING HAZARDOUS MATERIALS

37 TAC §4.1

The Texas Department of Public Safety (the department) proposes amendments to §4.1, concerning Transportation of Hazardous Materials. The proposed amendments are necessary to harmonize updates to Title 49, Code of Federal Regulations with those laws adopted by Texas

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be maximum efficiency of the Motor Carrier Safety Assistance Program.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The Texas Department of Public Safety, in accordance with the Administrative Procedures Act, Texas Government Code, §2001, et seq., and Texas Transportation Code, Chapter 644, will hold a public hearing on Tuesday, April 5, 2016, at 9:00 a.m., at the Texas Department of Public Safety, Texas Highway Patrol Division, Building G Annex, 5805 North Lamar, Austin, Texas. The purpose of this hearing is to receive comments from all interested persons regarding adoption of the proposed amendments to Administrative Rule §4.1 regarding Transportation of Hazardous Materials, proposed for adoption under the authority of Texas Transportation Code, Chapter 644, which provides that the director shall, after notice and a public hearing, adopt rules regulating the safe operation of commercial motor vehicles.

Persons interested in attending this hearing are encouraged to submit advance written notice of their intent to attend the hearing and to submit a written copy of their comments. Correspondence should be addressed to Major Chris Nordloh, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500.

Persons with special needs or disabilities who plan to attend this hearing and who may need auxiliary aids or services are requested to contact Major Chris Nordloh at (512) 424-2775 at least three working days prior to the hearing so that appropriate arrangements can be made.

Other comments on this proposal may be submitted to Major Chris Nordloh, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2775. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These amendments are proposed pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

Texas Transportation Code, §644.051 is affected by this proposal.

§4.1. Transportation of Hazardous Materials.

(a) The director of the Texas Department of Public Safety incorporates, by reference, the Federal Hazardous Materials Regulations, Title 49, Code of Federal Regulations, Parts 107 (Subpart G), 171 - 173, 177, 178, 179 (Subpart E), and 180, including all interpretations thereto, for commercial vehicles operated in intrastate, interstate, or foreign commerce, as amended through February 1, 2016 [~~July 1, 2015~~]. All other references in this section to the Code of Federal Regulations also refer to amendments and interpretations issued through February 1, 2016 [~~July 1, 2015~~].

(b) Explanations and Exceptions.

(1) Certain terms when used in the federal regulations as adopted in subsection (a) of this section will be defined as follows:

(A) the definition of motor carrier will be the same as that given in Texas Transportation Code, [~~Section~~] §643.001(6);

(B) hazardous material shipper means a consignor, consignee, or beneficial owner of a shipment of hazardous materials;

(C) interstate or foreign commerce will include all movements by commercial motor vehicle, both interstate and intrastate, over the streets and highways of this state;

(D) department means the Texas Department of Public Safety;

(E) FMCSA field administrator, as used in the federal motor carrier safety regulations, means the director of the Texas Department of Public Safety or the designee of the director for vehicles operating in intrastate commerce;

(F) farm vehicle means any vehicle or combination of vehicles controlled and/or operated by a farmer or rancher being used to transport agriculture products, farm machinery, and farm supplies to or from a farm or ranch; and

(G) private carrier means any person not included in the terms "common carrier by motor vehicle" or "contract carrier by motor vehicle" who transports by commercial motor vehicle property of which the person is the owner, lessee, or bailee, when such transportation is for the purpose of sale, lease, rent or bailment, or in furtherance of commerce.

(2) All references in Title 49, Code of Federal Regulations, Parts 107 (Subpart G), 171 - 173, 177, 178, 179 (Subpart E), and 180 made to other modes of transportation, other than by motor vehicles operated on streets and highways of this state, will be excluded and not adopted by this department.

(3) Regulations adopted by this department, including the federal motor carrier safety regulations, will apply to farm tank trailers used exclusively to transport anhydrous ammonia from the dealer to the farm. The usage of non-specification farm tank trailers by motor carriers to transport anhydrous ammonia must be in compliance with Title 49, Code of Federal Regulations, §173.315(m).

(4) The reporting of hazardous material incidents as required by Title 49, Code of Federal Regulations, §171.15 and §171.16 for shipments of hazardous materials by highway is adopted by the department.

(5) Regulations adopted by this department, including the federal motor carrier safety regulations, will apply to an intrastate motor carrier transporting a flammable liquid petroleum product in a cargo tank. The usage of non-specification cargo tanks by motor carriers for the intrastate transportation of flammable liquid petroleum products must be in compliance with Title 49, Code of Federal Regulations, §173.8.

(6) Regulations and exceptions adopted herein are applicable to all drivers and vehicles transporting hazardous materials in interstate, foreign, or intrastate commerce.

(7) Nothing in this section shall be construed to prohibit an employer from requiring and enforcing more stringent requirements relating to safety of operation and employee safety and health.

(8) Penalties assessed for violations of the regulations adopted herein will be based upon the provisions of Texas Transportation Code, Chapter 644, and §4.16 of this title (relating to Administrative Penalties, Payment, Collection and Settlement of Penalties).

(9) A peace officer certified, in accordance with §4.13 of this title (relating to Authority to Enforce, Training and Certificate Requirements), to enforce the Federal Hazardous Material Regulations, as adopted in this section, may declare a vehicle out-of-service using the North American Standard Hazardous Materials Out-of-Service [~~Out-of-service~~] Criteria as a guideline.

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

Filed with the Office of the Secretary of State on February 25, 2016.

TRD-201600943
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: April 10, 2016
For further information, please call: (512) 424-5848

TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 1. MANAGEMENT

SUBCHAPTER E. PROCEDURES IN CONTESTED CASE

43 TAC §§1.29, 1.37, 1.38

The Texas Department of Transportation (department) proposes amendments to §1.29, Notice of Hearing, §1.37, Notification of Decision, and §1.38, Motions for Rehearing, all concerning procedures in contested cases.

EXPLANATION OF PROPOSED AMENDMENTS

S.B. No. 1267, 84th Regular Session, 2015, amended Government Code, Chapter 2001, the Administrative Procedure Act (APA) to, among other things, make its deadlines more closely align with the Texas Rules of Civil Procedure and expand notice requirements. The department's procedures for contested cases, located in Title 43, Part 1, Chapter 1, Subchapter E of the Texas Administrative Code must be amended to comply with the changes to the APA made by S.B. 1267. The amendments substitute references to the APA for the restatement of statutory requirements provided in the current rules.

Amendments to §1.29, Notice of Hearing, replace a detailed description of the required contents of a notice of hearing with the simpler provision that a notice of hearing will conform with the notice requirements of the APA, which are provided by Government Code, §2001.052, as amended by S.B. 1267.

Amendments to §1.37, Notification of Decision, replace the requirement that a notification of decision will be sent to each party by first class mail with the statement that a notification will be sent to each party in the manner required by the APA. S.B. 1267 amended Government Code, §2001.142 to expand the methods that may be used to send the required notice and to add a process for determining when the notice was received.

Amendments to §1.38, Motions for Rehearing, make several changes relating to rehearing requests. The amendments delete subsection (a) because it is inaccurate; Government Code, §2001.145 provides exceptions to the requirement that a motion for rehearing is a prerequisite to an appeal of a decision or order in a contested case. The amendments also replace the deadlines for filing a motion for rehearing and a reply to a motion for rehearing with references to the APA. Those deadlines are found in Government Code, §2001.146 and were amended by S.B. 1267. Finally, the amendments replace the statement that a notice of a ruling on a motion for rehearing will be sent to each party by first class mail with a statement that a notice will be sent to each party in the manner required by the APA. S.B. 1267 amended Government Code, §2001.142 to expand the methods that may be used to send notice of the decision on a motion for rehearing.

FISCAL NOTE

Mr. Benjamin H. Asher, Interim Chief Financial Officer, has determined that for each of the first five years in which the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Mr. Jeff Graham, General Counsel, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Graham has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be expanded deadlines and notice requirements benefitting entities involved in contested cases with the department. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §§1.29, 1.37, and 1.38 may be submitted to Rule Comments, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "Contested Case Rules." The deadline for receipt of comments is 5:00 p.m. on April 11, 2016. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Government Code, §2001.004, which requires a state agency to "adopt rules of practice stating the nature and requirements of all available formal and informal procedures" under the APA.

CROSS REFERENCE TO STATUTE

Government Code, §2001.052, and Chapter 2001, Subchapter F.

§1.29. Notice of Hearing.

(a) Issuance. The department will issue notice of a hearing in accordance with the instructions of the judge and by certified or registered mail to each party's last known address as shown in the department's records.

(b) Content. The content of a notice of hearing will conform with the requirements of the APA. [~~A notice of hearing is sufficient if it includes:~~]

[~~(1) a statement of the time, place, and nature of the hearing;~~]

[~~(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;~~]

[~~(3) reference to the particular sections of the statutes and rules involved; and~~]

[~~(4) a short, plain statement of the matters asserted or, alternatively, the ALJ may direct the department to include a copy of the petition with the notice.~~]

§1.37. Notification of Decision.

(a) The commission or the executive director, as specified by statute or department rule, will issue the decision in a contested case.

(b) After [~~the commission or executive director issues~~] the decision is issued under subsection (a) of this section, the executive director will send a copy of the decision [~~by first class mail~~] to each party or the party's authorized representative in the manner required by the APA [~~and will keep an appropriate record of the mailing~~].

§1.38. Motions for Rehearing.

[~~(a) Prerequisite to appeal. A motion for rehearing is a prerequisite to appeal.~~]

(a) [~~(b)~~] Filing motion. A party must file a motion for rehearing with the executive director within the period provided by the APA for such a filing. In addition to information required by the APA, the [~~20 days after the date the party or party's authorized representative is notified of the decision. For purposes of this subsection, a party or attorney of record is presumed notified on the third day after the date that the decision or order is mailed by first-class mail. The~~] motion must contain:

(1) the name and representative capacity of the person filing the motion;

(2) the style and official docket number assigned by SOAH, and a department reference number, if applicable;

(3) the date of the decision or order; and

(4) a concise statement of each alleged error.

(b) [~~(c)~~] Reply to motion for rehearing. A reply to a motion for rehearing must be filed with the executive director within the period provided by the APA for such a reply. [~~30 days after the date the party or party's authorized representative is notified of the decision. For purposes of this subsection, a party or attorney of record is presumed notified on the third day after the date that the decision or order is mailed by first-class mail.~~]

(c) [~~(d)~~] Ruling on motion for rehearing. The commission or the executive director, as specified by statute or department rule, will rule on a motion for rehearing and issue the ruling in accordance with the APA.

(d) [~~(e)~~] Notice of ruling. After [~~the commission or executive director issues~~] a ruling is issued on a motion for rehearing, the executive director will send a copy of the ruling in the manner provided by the APA [~~by first class mail~~] to each party or the party's authorized representative [~~and will keep an appropriate record of the mailing~~].

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

Filed with the Office of the Secretary of State on February 25, 2016.

TRD-201600941
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: April 10, 2016
For further information, please call: (512) 463-8630

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CHAPTER 15. FINANCING AND CONSTRUCTION OF TRANSPORTATION PROJECTS

SUBCHAPTER E. FEDERAL, STATE, AND LOCAL PARTICIPATION

43 TAC §15.52

The Texas Department of Transportation (department) proposes amendments to §15.52, concerning Agreements.

EXPLANATION OF PROPOSED AMENDMENTS

Subchapter E of 43 TAC Chapter 15 describes federal, state, and local responsibilities for cost participation in highway improvement projects. These amendments make several changes to §15.52, Agreements.

Amendments to §15.52(3)(A)(i)(I) change one of the criteria allowed for an adjustment to a local government's fixed price amount obligation under a joint participation agreement between the department and a local government for a highway improvement project. The amendments change the phrase "site conditions change" to allow an adjustment if certain conditions encountered at the project site differ materially from those indicated in or expected under the contract for the project, as described by 23 C.F.R. §109. The term "differing site conditions" is used to be consistent with those federal regulations.

Amendments to §15.52(3)(A)(ii)(II), change the wording of a factor that the department will consider when determining the fixed price amount. Currently, the rule provides "the need for expeditious project completion" as one of those factors. The amendment changes that wording to "the need for accelerated project delivery" in order to be consistent with the terminology used in Federal Highway Administration programs.

Amendments to §15.52(3)(C)(ii)(III), change the wording of a factor that the executive director will consider in approving a request for periodic payments. Currently, the rule provides "the need for expeditious project completion" as one of those factors. The amendment changes that wording to "the need for accelerated project delivery." This change is consistent with the change made to §15.52(3)(A)(ii)(II).

Amendments to §15.52(5) change the phrase "significantly changed site conditions" to "significantly differing site conditions" to correspond to the changes made by the amendments to §15.52(3)(A)(i)(I) described above.

Amendments to §15.52(6)(A) correct the reference to the rule provision that allows an adjustment to a local government's fixed price obligation under a joint participation agreement.

Amendments to §15.52(6)(B)(ii) provide that, when the specified percentage method of payment is used, the local government, rather than the department, is responsible for any extra funds required to complete the project. Under §15.52(6)(B)(ii),

as amended in 2014, the department determines the final cost of a project after its completion. If the department finds that the amount received is insufficient to pay the local government's funding share, the rule provides that the department is to pay the balance. If the amount received exceeds the local government's funding share, the excess is returned to the local government. This change more appropriately allocates the risk of cost overruns to the party that has the ability to manage the cost of the project.

Amendments to §15.52(6)(C) provide that, when the periodic payment method is used, the local government, rather than the department, is responsible for any extra funds required to complete the project. This is similar to the change made to §15.52(B)(ii) to cover the insufficiency, and more appropriately allocates the risk of cost overruns to the party that has the ability to manage the cost of the project.

Amendments to §15.52(8)(D)(iii) change one of the factors that the department evaluates to determine whether to approve a local government's request to manage one or more elements of performance of a project from "need for expeditious project completion" to "the need for accelerated project delivery." This change is made to be consistent with the changes made in §15.52(3)(A)(ii)(II).

FISCAL NOTE

Benjamin H. Asher, Interim Chief Financial Officer, has determined that for each of the first five years in which the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Ms. Janice Mullenix, Director, Contracts and Purchasing, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Ms. Mullenix has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be a more precise estimation of total project cost, thereby improving the local government and department budgeting process. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §15.52 may be submitted to Rule Comments, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "Federal, State, and Local Participation Rules." The deadline for receipt of comments is 5:00 p.m. on April 11, 2016. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

STATUTORY AUTHORITY

The amendments are proposed 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

Transportation Code, Chapter 221; Transportation Code, Chapter 222, Subchapter C; and Transportation Code, §224.033.

§15.52. Agreements.

This section describes the contents of the department's joint participation agreement with a local government for a highway improvement project and the responsibilities of the parties to such an agreement.

(1) Right of entry. If the local government is the owner of the project site, it shall permit the department or its authorized representative to occupy the site to perform all activities required to execute the work.

(2) Right of way and utility relocations and adjustments. The local government will provide all necessary right of way and utility relocations and adjustments, whether publicly or privately owned, in accordance with §15.55 of this subchapter (relating to Construction Cost Participation). Existing utilities will be relocated and adjusted by the local government with respect to location and type of installation in accordance with the requirements of the department under §21.21 of this title (relating to State Participation in Relocation, Adjustment, and/or Removal) and Chapter 21, Subchapter C of this title (relating to Utility Accommodation).

(3) Funding arrangement. The agreement will specify the funding arrangement agreed upon by the department and the local government. The funding arrangement shall include any adjustments required by §15.55 of this subchapter. The funding arrangement agreed upon by the department and the local government for drainage construction costs will be as specified under §15.54(e) of this subchapter (relating to Construction).

(A) Standard (fixed price). The fixed price amount will be based on the estimated cost of the work to be performed by the department on a project for which state or federal funds are received.

(i) A local government is responsible for the fixed price amount, which is not subject to adjustment unless:

(I) differing site conditions are encountered [~~change~~];

(II) work requested by the local government is ineligible for federal participation; or

(III) the adjustment is mutually agreed on by the department and the local government.

(ii) In determining the fixed price amount, the department will consider:

(I) requests by the local government to include work that is ineligible for federal or state participation;

(II) the need for accelerated project delivery [~~expeditious project completion~~];

(III) the type of work proposed and the ability to accurately estimate its cost; and

(IV) any other considerations relating to the benefit of the state, the traveling public, and the operations of the department.

(iii) The department may refuse to enter into an agreement with a local government that has not previously complied with the financial obligations under an agreement entered into under this subchapter.

(B) Specified percentage. If approved by the executive director, the local government is responsible for all, or a specified per-

centage, as shown in Figure: 43 TAC §15.55(c) of this subchapter, of the direct costs incurred by the department for preliminary engineering, construction engineering, construction, and right of way, as well as the direct cost for any work included in the project which is ineligible for federal or state participation. For federally funded non-construction programs, the local government is responsible for any required match and for any work included that is ineligible for federal or state participation. The department will accept in-kind contributions for matching funds or other funds only under agreements that do not include highway construction.

(C) Periodic.

(i) The executive director may approve a local government to make periodic payments of its funding share only if:

(I) the periodic payments sought are based on the estimated cost for the work for which the funds are received and the local government proposes a schedule to repay the entire amount; and

(II) the local government does not have a delinquent obligation to the department, as defined in §5.10 of this title (relating to Collection of Debts).

(ii) In approving a request for periodic payments, the executive director will consider:

(I) inability of the local government to pay its total funding share prior to the department's scheduled date for contract letting, based upon population level, bonded indebtedness, tax base, and tax rate;

(II) past payment performance;

(III) need for accelerated project delivery [~~expeditious project completion~~];

(IV) whether the project is located in a local government that consists of all or a portion of an economically disadvantaged county; and

(V) any other considerations relating to the benefit of the state, the public, and the operations of the department.

(D) Off-State Highway System Bridge Program. For projects funded in the Off-State Highway System Bridge Program, the local government is responsible for a fixed amount that is based on the specified percentage, as shown in Figure: 43 TAC §15.55(c) of this subchapter, of the estimated direct costs for preliminary engineering, construction engineering, and construction, and for the actual direct costs for right of way and eligible utilities. The estimated direct costs that will be used to establish the fixed amount under this subparagraph, are based on the department's estimate of the eligible work at the time the agreement is executed. The local government is responsible for the estimated direct cost of any project cost item or portion of a cost item that is not eligible for federal participation under the Highway Bridge Program, 23 U.S.C. §144 and Highway Bridge Replacement and Rehabilitation Program, 23 C.F.R. §650 Subpart D. The fixed amount under this subparagraph will be adjusted through the execution of an amendment to reflect additional costs resulting from changes made at the request of the local government, either during preliminary engineering or construction.

(4) Interest. The department will not pay interest on funds provided by the local government. Funds provided by the local government will be deposited into, and retained in, the state treasury.

(5) Amendments. In the case of significantly differing [~~changed~~] site conditions or other mutually agreed upon changes in the scope of work authorized in the agreement, the department, and the local government will amend the funding agreement, setting forth the reason for the change and establishing the revised participation to be provided by the local government.

(6) Payment provision. The agreement will establish the conditions for payment by the local government, including, but not limited to, the method of payment and the time of payment.

(A) Standard (fixed price). If a fixed price funding arrangement is used, the fixed price amount is not subject to adjustment, except as provided for in paragraph (3)(A)(i) [~~(3)(B)~~] of this section.

(B) Specified percentage.

(i) Upon execution of the agreement or at a later date, unless periodic payments have been requested by the local government and approved by the executive director, the local government will pay, as a minimum, its funding share for the estimated cost for any right of way and preliminary engineering for the project. Unless periodic payments have been requested by the local government and approved by the executive director, the local government, before the department's scheduled date for contract letting, will remit to the department an amount equal to the remainder of the local government's funding share for the project.

(ii) After the project is completed the final cost will be determined by the department, based on its standard accounting procedures. If it is found that the amount received is insufficient to pay the local government's funding share, then the department will notify the local government of the amount of the difference and the local government shall promptly transmit that amount to the department [~~shall pay the balance~~]. If it is found that the amount received is in excess of the local government's funding share, the excess funds paid by the local government shall be returned.

(C) Periodic. After a periodically paid project is completed, the final cost will be determined by the department based on its standard accounting procedures. If it is found that the amount received is insufficient to pay the local government's funding share, then the department will notify the local government of the amount of the difference and the local government shall promptly transmit that amount to the department [~~shall pay the balance~~]. If it is found that the amount received is in excess of the local government's funding share, the excess funds paid by the local government shall be returned.

(D) Off-State Highway System Bridge Program. For projects funded in the Off-State Highway System Bridge Program, the department will determine the final cost after the project is completed, based on its standard accounting procedures. The department will notify the local government of any amount due for payment of costs related to changes made at the request of the local government. The local government shall promptly transmit the required amount to the department.

(E) Valuation of in-kind contributions. Before the department may enter an agreement under which goods, services, or real estate are accepted rather than financial consideration, the department will document a value for the in-kind contributions consistent with 49 C.F.R. §18.24.

(7) Termination. If the local government withdraws from the project after the agreement is executed, it shall be responsible for all direct and indirect project costs incurred by the department for the items of work in which the local government is participating.

(8) Responsibilities of the parties. The local government and the department shall identify in the agreement which party will prepare or provide construction plans, perform construction, advertise for bids, award a construction contract, and perform construction supervision. Activities assigned to the local government must comply with

subparagraph (A) of this paragraph and have the approvals required by subparagraph (B) of this paragraph.

(A) Local government performance and management of projects. For state highway improvement projects and other projects using state or federal funds, the agreement between the department and a local government may provide for the local government to:

(i) perform, using employees under the direct control of the local government, a highway improvement project on the state highway system;

(ii) outsource preliminary project engineering and design, bid opening, award of construction to a contractor, and construction management by the local government or a consultant hired by the local government of an improvement project for which reimbursement is requested;

(iii) contract for highway construction; or

(iv) perform other projects as authorized by law.

(B) Approval authority. Before a local government may perform an act described in subparagraph (A) of this paragraph, the executive director must authorize the local government to perform that act. The executive director may also approve the performance by employees of the local government of projects or activities appurtenant to a state highway, including drainage facilities, surveying, traffic counts, driveway construction, landscaping, guardrails, and other items incidental to the roadway itself, such as signing, pavement markings, signals, illumination, and traffic management systems.

(C) Conditions. A local government may perform an act described in subparagraph (A) of this paragraph only if:

(i) the local government commits in the agreement to comply with all federal, state, and department requirements, standards, and specifications, and agrees to forfeit any claim to federal and state reimbursement if they fail to comply;

(ii) the project is authorized by the commission in the current Unified Transportation Program or by a specific minute order;

(iii) a project on the state highway system performed or managed by a local government is operationally beneficial to the state;

(iv) a roadway construction project requested by the local government that is to be on the state highway system, for which local management is proposed, is funded with at least 50 percent of the funds coming from a non-federal and non-state source, unless a lesser percentage is approved by the executive director;

(v) the local government agrees to pay any cost overruns in addition to its local participation on an off-state highway system bridge program project for which local management is proposed; and

(vi) the department reviews and approves all plans, contract awards, and change orders.

(D) Approval. The department will not approve any project that includes the local government improving freeway mainlanes on the state highway system, without express written approval of the executive director. In determining its approval or disapproval of local government's request to manage one or more elements of performance and management of a project, the department will evaluate the following criteria:

(i) previous experience of the local government in performing the type of work proposed;

(ii) the capability of the local government to perform the type of work proposed or to award and manage a contract for that work in a timely manner, consistent with federal, state, and department regulations, standards, and specifications;

(iii) the need for accelerated project delivery [~~expeditious project completion~~];

(iv) department resources available to perform or manage the highway improvement project in an efficient and timely manner;

(v) cost effectiveness of local performance of the work as compared to awarding the highway improvement project through the competitive bidding process; and

(vi) any other considerations relating to the benefit of the state, the traveling public, and the operations of the department.

(9) Acknowledgment. The local government must acknowledge in the agreement that while not an agent, servant, nor employee of the state, it is responsible for its own acts and deeds and for those of its agents or employees during the performance of the work authorized in the contract.

(10) Local regulations. If any existing, future or proposed local ordinance, commissioners court order, rule, policy, or other directive, including, but not limited to, outdoor advertising or storm water drainage facility requirements, that is more restrictive than state or federal regulations, or any other locally proposed change, including, but not limited to, plats or re-plats, results in any increased cost to the department for a highway improvement project, the local government must commit in the agreement to being responsible for all increased costs associated with the ordinance, order, policy, directive, or change, regardless of the funding arrangement specified in the agreement.

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

Filed with the Office of the Secretary of State on February 25, 2016.

TRD-201600942
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: April 10, 2016
For further information, please call: (512) 463-8630

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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 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 52. ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §52.2

The Office of the Attorney General, Human Resources Division, adopts amendments to §52.2 of Title 1 of the Texas Administrative Code, regarding agency employee education and training. The amended section is adopted without changes to the proposed text as published in the November 20, 2015, issue of the *Texas Register* (40 TexReg 8077) and will not be republished.

The amendments are adopted in order to address provisions included in HB 3337, which passed during the 84th Texas legislative session.

No comments were received regarding adoption of the amendments during the comment period.

The amendments are adopted in accordance with Texas Government Code §656.048(a), which requires the Office of the Attorney General to adopt rules relating to the eligibility of the agency's employees for training and education, and the obligations assumed by the employee on receiving the training and education.

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

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

Filed with the Office of the Secretary of State on February 24, 2016.

TRD-201600905
Amanda Crawford
General Counsel
Office of the Attorney General
Effective date: March 15, 2016
Proposal publication date: November 20, 2015
For further information, please call: (512) 936-7940

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PART 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 202. INFORMATION SECURITY STANDARDS

The Texas Department of Information Resources (department) adopts amendments to 1 TAC Chapter 202, §§202.2, 202.21, 202.23, 202.71, and 202.73, concerning Information Security Standards, to clarify and update the processes and policies of current practices. The rules are adopted without changes to the proposal as published in the November 20, 2015, issue of the *Texas Register* (40 TexReg 8078).

In 1 TAC §202.2, an exception was created for public junior colleges. This amendment is necessary to align the definition with Texas Government Code §2054.0075.

In 1 TAC §202.21(b)(4), department staff recommended amendments to language to clarify existing policies and best practices.

In 1 TAC §202.23(b)(1)(A), department staff added language specifying that reports made to the department must be in the form and manner specified by the department. The adopted language clarifies current policies and procedures.

In 1 TAC §202.71(b)(4), department staff recommended amendments to language to clarify existing policies and best practices.

In 1 TAC §202.73(b)(1)(A), department staff added language specifying that reports made to the department must be in the form and manner specified by the department. The adopted language clarifies current policies and procedures.

The changes to the chapter apply to state agencies, local government and institutions of higher education. The assessment of the impact of the proposed changes on institutions of higher education was prepared in consultation with the Information Technology Council for Higher Education in compliance with §2054.121(c), Texas Government Code.

Eddie Block, Chief Information Security Officer, has determined that during the first five-year period following the amendments to 1 TAC Chapter 202, §§202.2, 202.21, 202.23, 202.71, and 202.73, there will be no fiscal impact on state agencies, institutions of higher education and local governments.

Mr. Block has further determined that for each year of the first five years following the adoption of the amendments to 1 TAC Chapter 202, §§202.2, 202.21, 202.23, 202.71, and 202.73 there are no anticipated additional economic costs to persons or small businesses required to comply with the amended rules.

No comments were received in response to the notice of proposed rulemaking.

SUBCHAPTER A. DEFINITIONS

1 TAC §202.2

The amendments to existing rule are adopted pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code; and §2059.053, Texas Government Code, which authorizes the department to adopt rules related to network security.

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

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

Filed with the Office of the Secretary of State on February 25, 2016.

TRD-201600936
Martin H. Zelinsky
General Counsel
Department of Information Resources
Effective date: March 16, 2016
Proposal publication date: November 20, 2015
For further information, please call: (512) 463-1634

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SUBCHAPTER B. INFORMATION SECURITY STANDARDS FOR STATE AGENCIES

1 TAC §202.21, §202.23

The amendments to existing rules are adopted pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code; and §2059.053, Texas Government Code, which authorizes the department to adopt rules related to network security.

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

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

Filed with the Office of the Secretary of State on February 25, 2016.

TRD-201600937
Martin H. Zelinsky
General Counsel
Department of Information Resources
Effective date: March 16, 2016
Proposal publication date: November 20, 2015
For further information, please call: (512) 463-1634

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SUBCHAPTER C. INFORMATION SECURITY STANDARDS FOR INSTITUTIONS OF HIGHER EDUCATION

1 TAC §202.71, §202.73

The amendments to existing rules are adopted pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code; and §2059.053, Texas Government Code, which authorizes the department to adopt rules related to network security.

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

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

Filed with the Office of the Secretary of State on February 25, 2016.

TRD-201600938
Martin H. Zelinsky
General Counsel
Department of Information Resources
Effective date: March 16, 2016
Proposal publication date: November 20, 2015
For further information, please call: (512) 463-1634

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.23

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 1, Subchapter A, §1.23, concerning State of Texas Low Income Housing Plan and Annual Report, without changes to the proposed text as published in the January 1, 2016, issue of the *Texas Register* (41 TexReg 25) and will not be republished. The section adopts by reference the 2016 State of Texas Low Income Housing Plan and Annual Report ("SLIHP") as a rule. No changes have been made to the rule text or to the 2016 SLIHP in response to comment.

REASONED JUSTIFICATION. The Department finds that Texas Government Code §2306.0723 specifically authorizes the Department to consider the SLIHP as a rule. Accordingly, the amendment adopts by reference the 2016 SLIHP. The purpose of the rule and referenced 2016 SLIHP is to serve as a comprehensive reference on statewide housing needs, housing resources, and strategies for funding allocations. The document reviews the Department's programs, current and future policies, resource allocation plan to meet state housing needs, and reports on State Fiscal Year 2015 performance.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS. The public comment period was between January 1, 2016, and January 21, 2016, and a public hearing was held on January 14, 2016, in Austin, Texas. Written comments were accepted by mail, email, and facsimile.

Although no comments were received concerning the proposed rule amendment, the Department received seven comments on the 2016 SLIHP from one source: Texas Council for Developmental Disabilities.

Comment 1: TCDD commented on the unmet need for individuals with incomes below 30% Area Median Family Income ("AMFI"), stating that failure to provide housing affordable to people with disabilities or elderly who rely on Social Security, Social Security Disability Income or Supplement Security Income forces many individuals into unsafe conditions. Further, TCDD commented that only the Section 811 and Homeless Housing and Services Program ("HHSP") target individuals with income below 30% AMFI and urged TDHCA to go beyond simply recognizing the unmet need and provide more for this income group.

Department Response: The Department targets individuals and households with income at or below 30% AMFI through a number of programs. In addition to the Section 811 Program and HHSP, TDHCA administers the Community Services Block Grant ("CSBG") Program, with income eligibility at or below 125% of the Federal Poverty level, and the Emergency Solutions Grants ("ESG") Program, with income eligibility at or below 30% AMI. Through CSBG and ESG, TDHCA served more than 362,000 individuals in SFY 2015.

Also, in the 2016 Qualified Allocation Plan ("QAP"), which governs the awarding and allocation of 2016 9% Housing Tax Credit ("HTC") program funds, scoring priority may be awarded to applicants who elect to restrict an additional 10 percent of the proposed low income units for households at or below 30 percent of Area Median Gross Income ("AMGI"). These Units must be in addition to units required under any other provision of the 2016 QAP. While the pre-application period for the 2016 HTC has concluded, the Department is actively seeking stakeholder input on the development of the 2017 QAP. The 2017 QAP Project Plan is available at http://www.tdhca.state.tx.us/multifamily/docs/17-QAP-ProjectPlan.pdf.

Finally, through the Department's newly created Multifamily Direct Loan Program, funding is provided to nonprofit and for-profit entities for the new construction or rehabilitation of affordable multifamily rental developments. Funding is typically provided in the form of low interest rate, repayable construction-to-permanent loans. Multifamily developments funded through the Department's Multifamily Direct Loan Program must comply with long-term rent and income restrictions and may be layered with additional funding sources (such as HTC). In the Multifamily Direct Loan Program NOFA, released in January 2016, funds under a Deferred Forgivable Loan Set-Aside are intended to increase the number of 30% rent-restricted units and occupy them with households with an annual income of 30% Area Median Income ("AMI") or less who are not currently receiving any type of rental assistance. The Department accepted applications under this NOFA beginning on January 4, 2016. Based on the availability of funds, applications may be accepted until 5:00 p.m. Austin Local Time on May 31, 2016. The NOFA can be found at http://www.tdhca.state.tx.us/multifamily/nofas-rules.htm.

Through the administration of all programs, TDHCA will continue to solicit public and stakeholder comment to enhance program delivery to target populations. No changes have been made to the SLIHP in response to this comment.

Comment 2: TCDD referenced TDHCA's Strategic Plan Goal 1 and recommended that TDHCA should develop a target income category of between 0 and 110% of the level of SSI with the rationale that setting a threshold below "extremely low" will allow TDHCA to monitor, plan for, and allocate resources to a group that TCDD states is currently slipping through the cracks of the housing and human service programs.

Department Response: TDHCA's Strategic Plan Goals reflect program performance based upon measures developed with the State's Legislative Budget Board ("LBB") and the Governor's Office of Budget, Planning and Policy ("GOBPP"). The goals are also based upon Riders attached to the Department's appropriations bill. The Department believes that the goals and objectives for the various TDHCA programs, to the extent feasible, should be consistent with its mandated performance requirements. Revising income eligibility and setting a target income category of between 0 and 110% of the level of SSI for programs addressed by Goal 1 (Single-Family Mortgage Revenue Bond Program, Multifamily Mortgage Revenue Bond Program, HOME Investment Partnership Program, Housing Trust Fund, Section 8 Housing Choice Voucher Program, and the Housing Tax Credit Program) would be driven by changes to program rules. Opportunities for public comment on program rules are made available at http://www.tdhca.state.tx.us/public-comment.htm. Further, the Department has developed a plan for ongoing stakeholder involvement in development of the 2017 QAP, which governs the HTC program. The 2017 QAP Project Plan is available at http://www.tdhca.state.tx.us/multifamily/docs/17-QAP-ProjectPlan.pdf. No changes have been made to the SLIHP in response to this comment.

Comment 3: Referring to Goal 3 of TDHCA's Strategic Plan goals, TCDD recommended that people with extremely low-income should be included in the opportunity to improve living conditions, citing that seniors and people with disabilities living on fixed incomes will not be able to keep up their homes and will be choosing between heat and food.

Department Response: In the utility assistance programs that Goal 3 and the TCDD comment refer to, program rules require the Department to establish priority criteria to serve persons in Households who are particularly vulnerable such as the Elderly, Persons with Disabilities, Families with Young Children, Households with High Energy Burden, and Households with High Energy Consumption. Highest energy costs or needs in relation to income shall be the highest rated item in sliding scale priority determinations (10 TAC Chapter 5 Subchapter D, §5.407). No changes have been made to the SLIHP in response to this comment.

Comment 4: TCDD referenced Rider 5 (a) of the General Appropriations Act and recommended that TDHCA increase the $30,000,000 targeted allocation of resources that provide mainstream community integrated housing for people with extremely low-income.

Department Response: As required by Rider 5 (a) of the General Appropriations Act, TDHCA adopts an annual goal to apply no less than $30,000,000 of the funds available from the Housing Trust Fund, HOME Program, Section 8 Program, and Housing Tax-Credit Program's total housing funds toward housing assistance for individuals and families earning less than 30% AMFI. TDHCA regularly exceeds this goal, and as reported in this Plan, the actual funding for SFY 2015 was $59,423,728, meeting the goal by 198.08%. No changes have been made to the SLIHP in response to this comment.

Comment 5: TCDD recommended that TDHCA include a goal to dedicate expected National Housing Trust Fund ("NHTF") funding to establish community-integrated accessible housing for individuals who must rely on Social Security or Supplemental Security Income or incomes no greater than 20% AMFI.

Department Response: Although TDHCA has been named as the State-Designated Entity that will administer NHTF funds in Texas, TDHCA must first develop a NHTF Allocation Plan and solicit input from the public, in accordance with the HUD-approved Citizen Participation Plan, before setting performance goals. At this time, HUD anticipates that grantees will receive their NHTF allocations by summer 2016. No changes have been made to the SLIHP in response to this comment.

Comment 6: TCDD recommended that TDHCA include a goal to encourage and provide incentives to employ people with disabilities in building, rehabilitating or managing TDHCA housing programs in support of the Texas Employment First policy for working age Texans adopted by the 83rd Texas Legislature.

Department Response: While the Employment-First policy, as required by Senate Bill 1226 83rd Texas Legislature, Regular Session, only applies to the Health and Human Services Commission, the Texas Education Agency, and the Texas Workforce Commission, the Department recognizes the importance of competitive employment opportunities that provide a living wage for individuals with disabilities. Similar to the Department response to Comment 2, adding incentives TDHCA programs to employ people with disabilities would be driven by changes to program rules. Opportunities for public comment on program rules are made available at http://www.tdhca.state.tx.us/public-comment.htm. Again, the Department has developed a plan for ongoing stakeholder involvement in development of the 2017 Qualified Allocation Plan ("QAP"), which governs the HTC program. The 2017 QAP Project Plan is available at http://www.tdhca.state.tx.us/multifamily/docs/17-QAP-ProjectPlan.pdf. No changes have been made to the SLIHP in response to this comment.

Comment 7: TCDD recommended that TDHCA include a goal to promote innovative approaches that advance community integrated housing opportunities for individuals with disabilities that couple general revenue with federal funding.

Department Response: Similar to the Department response to Comment 2 and Comment 6, adding a goal to TDHCA programs to promote innovative approaches that advance community integrated housing opportunities for individuals with disabilities that couple general revenue with federal funding would be driven by changes to program rules. Opportunities for public comment on program rules are made available at http://www.tdhca.state.tx.us/public-comment.htm. Again, the Department has developed a plan for ongoing stakeholder involvement in development of the 2017 QAP, which governs the HTC program. The 2017 QAP Project Plan is available at http://www.tdhca.state.tx.us/multifamily/docs/17-QAP-ProjectPlan.pdf. No changes have been made to the SLIHP in response to this comment.

The TDHCA Governing Board approved the 2016 SLIHP and the final order adopting the amendments on February 25, 2016.

The full text of the 2016 SLIHP may be viewed at the Department's website: www.tdhca.state.tx.us. The public may also receive a copy of the 2016 SLIHP by contacting the Department's Housing Resource Center at (512) 475-3976.

STATUTORY AUTHORITY. The amendments are adopted pursuant to the authority of Texas Government Code §2306.053 which authorizes the Department to adopt rules and pursuant to §2306.0723 which specifically authorizes the Department to consider the SLIHP as a rule.

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 26, 2016.

TRD-201600956
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: March 17, 2016
Proposal publication date: January 1, 2016
For further information, please call: (512) 936-7803

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING ADULT AND COMMUNITY EDUCATION

19 TAC §89.1301

The Texas Education Agency (TEA) adopts the repeal of §89.1301, concerning adult and community education. The repeal is adopted without changes to the proposed text as published in the December 18, 2015 issue of the *Texas Register* (40 TexReg 9047) and will not be republished. Section 89.1301 establishes definitions and provisions relating to the use of funds, essential program components, allocation of funds beginning with school year 2013-2014, the application process, match requirements, and tuition and fees. The adopted repeal is necessary because the statutory authority for the rule was repealed and the authority for adult basic education was transferred from the TEA to the Texas Workforce Commission (TWC) effective September 1, 2013.

REASONED JUSTIFICATION. In accordance with the Texas Education Code (TEC), §29.2535, §89.1301, Service Provider Contracts for Adult Education Programs, establishes definitions and provisions relating to the use of funds, essential program components, allocation of funds beginning with school year 2013-2014, the application process, match requirements, and tuition and fees. The rule also addresses other provisions, including allowable and nonallowable expenditures, staff development, special projects, evaluation of programs, and revocation and recovery of funds.

Senate Bill (SB) 307, 83rd Texas Legislature, Regular Session, 2013, repealed TEC, §29.2535, and transferred the authority for adult basic education from TEA to TWC.

The adopted repeal of 19 TAC §89.1301 is necessary because the statutory authority for the rule has been repealed.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. The public comment period on the proposal began December 18, 2015, and ended January 19, 2016. No public comments were received.

STATUTORY AUTHORITY. The repeal is adopted under the Texas Education Code, §29.2535, which required the agency to adopt rules to provide for a competitive procurement process to award a contract to a service provider of an adult education program. The section was repealed by Senate Bill 307, 83rd Texas Legislature, Regular Session, 2013.

CROSS REFERENCE TO STATUTE. The repeal implements the Texas Education Code, §29.2535, as repealed by Senate Bill 307, 83rd Texas Legislature, Regular Session, 2013.

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 24, 2016.

TRD-201600918
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: March 15, 2016
Proposal publication date: December 18, 2015
For further information, please call: (512) 475-1497

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CHAPTER 101. ASSESSMENT
SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING IMPLEMENTATION OF THE ACADEMIC CONTENT AREAS TESTING PROGRAM
DIVISION 3. SECURITY OF ASSESSMENTS, REQUIRED TEST ADMINISTRATION PROCEDURES AND TRAINING ACTIVITIES

19 TAC §101.3031

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §101.3031(b)(2) is not included in the print version of the Texas Register. The figure is available in the on-line version of the March 11, 2016, issue of the Texas Register.)

The Texas Education Agency (TEA) adopts an amendment to §101.3031, concerning student assessment. The amendment is adopted with changes to the proposed text as published in the December 25, 2015 issue of the *Texas Register* (40 TexReg 9433). The section addresses required test administration procedures and training activities to ensure validity, reliability, and security of assessments. The amendment adopts the *2016 Test Security Supplement* as part of the Texas Administrative Code. The earlier versions of the security supplement will remain in effect with respect to the year for which they were developed.

REASONED JUSTIFICATION. Through the adoption of 19 TAC §101.3031, effective March 26, 2012, the commissioner exercised rulemaking authority relating to the administration of assessment instruments adopted or developed under the Texas Education Code, §39.023, including procedures designed to ensure the security of the assessment instruments. The rule addresses purpose, administrative procedures, training activities, and records retention. As part of the administrative procedures, school districts and charter schools are required to comply with test security and confidentiality requirements delineated annually in test administration materials.

The adopted amendment to 19 TAC §101.3031, Required Test Administration Procedures and Training Activities to Ensure Validity, Reliability, and Security of Assessments, updates the rule by adopting the *2016 Test Security Supplement* as Figure: 19 TAC §101.3031(b)(2). The *2016 Test Security Supplement* describes the security procedures and guidelines that school districts and charter schools are required to follow to ensure the security and validity of the Texas assessment system.

Adopted within the *2016 Test Security Supplement* are five substantive changes for the administration of the 2016 assessments.

The first change relates to the scoring of a student's answer document. To help clarify existing policy, the *2016 Test Security Supplement* specifies that students who are in Grades 3-8 or are taking an end-of-course assessment for the first time who are in attendance on the day of testing but choose not to participate or refuse to mark their answers on the answer document or in the online form will have their tests submitted for scoring as is. The answer document that is submitted at the conclusion of the student's test session is considered to be scorable. Districts are responsible for providing all eligible students who are in attendance during the administration of an assessment with an opportunity to participate in the test and for appropriately scoring each answer document. At adoption, the *2016 Test Security Supplement* has been amended to clarify the scoring requirement for students taking an end-of-course assessment for the first time.

The second policy change applies to Texas English Language Proficiency Assessment System (TELPAS) Rater Training Calibration Activities. The TEA has stipulated in the *2016 Test Security Supplement* that the calibration activities must be completed in a proctored environment. The *2016 Test Security Supplement* also directs districts to make the necessary facility arrangements to hold calibration activities. The supplement stipulates that receiving or providing unallowable assistance during TELPAS calibration activities constitutes a serious testing irregularity.

Third, in response to requests from district personnel for additional flexibility while still allowing for the preview of State of Texas Assessments of Academic Readiness (STAAR®) Alternate 2 secure test material to assist in the preparation of accommodations, trained test administrators will now be permitted to keep the test materials in their possession throughout the day as long as the secure materials are kept in locked storage when not in use. All materials must still be checked back in to the campus coordinator at the end of the day and district and campus personnel are required to verify compliance with these procedures.

The fourth change pertains to the calculator requirement for state assessments, which allowed districts to provide either a handheld calculator or a calculator application available on a tablet. The *2016 Test Security Supplement* specifies that the internet capabilities of a provided calculator or device that has calculator application must be disabled. Devices must also be locked down (in kiosk mode) to prevent the use of other applications during testing.

Last, the TEA clarifies policies for the verification of the destruction of materials. Districts will be instructed to verify that procedures are in place for the collection and destruction of any

state-supplied reference materials, recordings, graph paper, or scratch paper that students have written on during a test.

In response to public comment, the TEA has revised language from the proposed *2016 Test Security Supplement* that required districts to release students from the testing area once they had completed and submitted their tests for scoring. At adoption, the *2016 Test Security Supplement* states that once a student has completed and submitted a test, the student may quietly read a book or be allowed to leave the testing area. Two other conforming revisions were also made to reflect that students may quietly read a book or leave the testing room after submitting an assessment.

The security supplements adopted prior to the 2016 year will remain in effect with respect to a given year.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began December 25, 2015, and ended January 25, 2016. Following is a summary of the public comments received and corresponding agency response regarding the proposed amendment to 19 TAC Chapter 101, Assessment, Subchapter CC, Commissioner's Rules Concerning Implementation of the Academic Content Areas Testing Program, Division 3, Security of Assessments, Required Test Administration Procedures and Training Activities, §101.3031, Required Test Administration Procedures and Training Activities to Ensure Validity, Reliability, and Security of Assessments.

Comment: An educator from Dickinson Independent School District (ISD) commented that the proposed *2016 Test Security Supplement* contradicted later agency communication that stated that once a student has submitted the test, the student may quietly read a book or be allowed to leave the testing area. The educator requested that this change be reflected in the adopted *2016 Test Security Supplement.* An educator from Aransas County ISD commented in objection to the requirement in the proposed *2016 Test Security Supplement* to release a student from the testing environment once that student's test is submitted.

Agency Response: The agency agrees. The adopted *2016 Test Security Supplement* has been revised to allow a student to read a book quietly or leave the testing environment after that student's assessment has been submitted.

STATUTORY AUTHORITY. The amendment is adopted under the Texas Education Code (TEC), §26.010, which prohibits a student from being removed from a class or school by a parent in order to avoid a test and prohibits a student from being exempted from satisfying grade-level or graduation requirements in a manner acceptable to both the school district and the agency; §39.023, which requires school districts to administer the Grades 3-8 state-developed assessments to all eligible students; §39.025, as amended by House Bill 2349, 84th Texas Legislature, 2015, which requires a student to pass each end-of-course assessment listed in TEC, §39.023(c), only for a course in which the student is enrolled and for which an end-of-course assessment is administered in order to receive a Texas diploma; §39.030(a), which requires school districts to ensure the security of the state's assessment instruments and student answer documents in their preparation and administration; §39.0301(a)(1), which requires the commissioner to establish procedures for the administration of the state's assessment instruments, including procedures designed to ensure the security of those assessments. Per TEC, §39.0301(a-1), the procedures the commissioner is required to establish must, to the extent possible, minimize disruptions to school operations and classroom environment. Additionally, TEC, §39.0301(a-1), stipulates that school districts must also minimize disruptions to school operations and the classroom environment when implementing the required assessment administration procedures; and §39.0304, which authorizes the commissioner to adopt rules to require training for school district employees involved in the administration of the state's assessments. This training may include qualifying components to ensure the school district personnel involved in an administration of the state's assessments possess the necessary knowledge and skills required to securely and reliably administer those assessments.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §§26.010; 39.023; 39.025, as amended by House Bill 2349, 84th Texas Legislature, 2015; 39.030(a); 39.0301; and 39.0304.

§101.3031. Required Test Administration Procedures and Training Activities to Ensure Validity, Reliability, and Security of Assessments.

(a) Purpose. To ensure that each assessment instrument is reliable and valid and meets applicable federal requirements for measurement of student progress, the commissioner of education shall establish test administration procedures and required training activities that support the standardization and security of the test administration process.

(b) Test administration procedures. These test administration procedures shall be delineated in the test administration materials provided to school districts and charter schools annually. Districts and charter schools must comply with all of the applicable requirements specified in the test administration materials. Test administration materials shall include, but are not limited to, the following:

(1) general testing program information;

(2) requirements for ensuring test security and confidentiality described in the *2016 Test Security Supplement* provided in this paragraph;

Figure: 19 TAC §101.3031(b)(2)

(3) procedures for test administration;

(4) responsibilities of personnel involved in test administration; and

(5) procedures for materials control.

(c) Training activities. As part of the test administration procedures, the commissioner shall require training activities to ensure that testing personnel have the necessary skills and knowledge required to administer assessment instruments in a valid, standardized, and secure manner. The commissioner may require evidence of successful completion of training activities. Test coordinators and administrators must receive all applicable training as required in the test administration materials.

(d) Records retention. As part of test administration procedures, the commissioner shall require school districts and charter schools to maintain records related to the security of assessment instruments for a minimum of five years.

(e) Applicability. The test administration procedures and required training activities established in the annual test security supplements for prior years remain in effect for all purposes with respect to the prior year to which it applies.

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 24, 2016.

TRD-201600893
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: March 15, 2016
Proposal publication date: December 25, 2015
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 73. CHIROPRACTIC FACILITIES

22 TAC §73.4

The Texas Board of Chiropractic Examiners (Board) adopts amendment to Chapter 73, §73.4, concerning Rules of Conduct for Facility Owners, without changes to the proposed text as published in the November 20, 2015, issue of the *Texas Register* (40 TexReg 8089). The rule text will not be republished.

This section establishes requirements and procedures related to chiropractic facilities.

The rule is amended to require facility owners to maintain a current address with the Board.

No written comments were received regarding the adoption of the amendment. However, the Board did discuss the issue of the five (5) business days within which a facility should notify of a change in its address. Staff noted that the window was relatively short as compared to a physical mail address because electronic-mail is often used for matters where time is of the essence. Additionally, it should be noted that the postal service, unlike electronic-mail in general, has a forwarding service so that communication may flow unimpeded. Staff additionally indicated that the shortened timeframe was not intended to be a tool to create a compliance issue but to impress upon the facility owner the urgency of providing an update to maintain unimpeded communication flow.

The rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety. The Board is further authorized to adopt rules based upon the relevant portions of the Administrative Procedure Act, Government Code §2001.

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 25, 2016.

TRD-201600932
Bryan Snoddy
General Counsel
Texas Board of Chiropractic Examiners
Effective date: September 1, 2016
Proposal publication date: November 20, 2015
For further information, please call: (512) 305-6715

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CHAPTER 75. LICENSES AND RENEWALS

22 TAC §75.1

The Texas Board of Chiropractic Examiners (Board) adopts amendments to Chapter 75, §75.1, concerning Licenses and Renewals, with changes to the proposed text as published in the November 20, 2015, issue of the *Texas Register* (40 TexReg 8090). The rule text will be republished.

This section establishes requirements and procedures related to licenses and renewal.

The rule is amended to require licensees to maintain a current address with the Board, and it additionally makes physical address changes submitted to the Board through online portals effective.

No written comments were received regarding the adoption of the amendment. However Board staff did note that it had already begun to process physical address changes through online portals.

The amendment is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety.

§75.1. Notification and Change of Address.

(a) Licensees shall maintain a current physical home and business address with the Board. In addition, a different mailing address may be provided beyond that of the home and business address. Within 30 days of a change in any of these addresses, a licensee shall notify the Board of the change in writing via U.S. mail, electronic-mail, facsimile, or other written communication. The notification of address change shall clearly and legibly identify the licensee, the address to be changed, the license number(s) associated with the address, and shall be signed by the licensee(s).

(b) The notification shall be signed by the licensee and must include the license number.

(c) A licensee shall maintain a current electronic mail address with the board. A licensee shall notify the board, by electronic mail, of any change in the electronic mailing address within five (5) business days of the change. The notification must include the license number.

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 25, 2016.

TRD-201600933

Bryan Snoddy
General Counsel
Texas Board of Chiropractic Examiners
Effective date: September 1, 2016
Proposal publication date: November 20, 2015
For further information, please call: (512) 305-6715

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PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 133. LICENSING

The Texas Board of Professional Engineers (Board) adopts amendments to §133.3, concerning Engineer-in-Training Application and Certification, §133.61, concerning Engineering Examinations Required for a License to Practice as a Professional Engineer, §133.65, concerning Examination on the Fundamentals of Engineering, §133.67, concerning Examination on the Principles and Practice of Engineering and §133.71, concerning Examination for Record Purposes, without changes to the proposed text as published in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9060). The rules will not be republished.

The adopted rule changes to §§133.3, 133.61, 133.65, 133.67 and 133.71 implement process changes related to decoupling the PE exam from the review of engineering experience. This change will allow an approved person to take the Principles and Practice of Engineering (PE) exam prior to gaining the required engineering experience for licensure. Decoupling of the PE exam from the experience increases the flexibility of the process for potential applicants, but does not decrease the expected qualifications for licensure. The standards for competence and requirements for licensure will be the same as under the previous rules. Other adopted changes modified the exam approval process to allow three exam attempts as scheduled by the examinee instead of four consecutive exam administrations.

The Board received comments for and against the proposed rules from 185 individuals. There were 79 commenters in opposition to the change. Some opposition comments expressed the desire to keep the experience prior to taking the PE exam to help the potential licensee retain more knowledge and to perform better on the exam itself. Other opposition commenters recognized the opportunity for learning and the inherent value of studying for the PE exam after engineering experience was obtained and thought it should remain unchanged. Another group of commenters stated that increasing the flexibility of the process lowers the rigor and would make the licensing process easier. One commenter opposed the rule change allowing 3 exam attempts in a four year window instead of 4 consecutive exam administrations for an approval.

The remaining comments received were in support of the proposal. Comments in support of the changes from current licensed Professional Engineers and certified Engineers In Training generally stated that the increased flexibility of decoupling would enhance the licensure process and encourage licensure of additional qualified people who would have otherwise been more restricted by the schedule of the application and exam process. The Board also received 3 comments from independent Texas engineering organizations in support of the proposal. All comments were responded to by staff. The Board reviewed and considered all comments received. The Board felt that the increased flexibility of the process will have a positive effect on the engineering community and the public and will not result in a lowering of the standards for licensure or licensing of less qualified engineers. No changes were made to the rules as proposed.

SUBCHAPTER A. ENGINEER-IN-TRAINING

22 TAC §133.3

The amendment is adopted pursuant to Texas Occupations Code §1001.202, which authorizes the Board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of

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 29, 2016.

TRD-201600959
Lance Kinney, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: May 1, 2016
Proposal publication date: December 18, 2015
For further information, please call: (512) 440-7723

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SUBCHAPTER G. EXAMINATIONS

22 TAC §§133.61, 133.65, 133.67, 133.71

The amendments are adopted pursuant to Texas Occupations Code §1001.202, which authorizes the Board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of

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 29, 2016.

TRD-201600960
Lance Kinney, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: May 1, 2016
Proposal publication date: December 18, 2015
For further information, please call: (512) 440-7723

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SUBCHAPTER H. REVIEW PROCESS OF APPLICATIONS AND LICENSE ISSUANCE

22 TAC §133.87

The Texas Board of Professional Engineers (Board) adopts amendments to §133.87, concerning Final Action on Applica-

tions, without changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9438). The rule will not be republished.

The adopted rule changes to §133.87 implement process changes related to decoupling the PE exam from the review of engineering experience. This change will allow an approved person to take the Principles and Practice of Engineering (PE) exam prior to gaining the required engineering experience for licensure. Decoupling of the PE exam from the experience increases the flexibility of the process for potential applicants, but does not decrease the expected qualifications for licensure. The standards for competence and requirements for licensure will be the same as under the previous rules. Other adopted changes modified the exam approval process to allow three exam attempts as scheduled by the examinee instead of four consecutive exam administrations.

Elsewhere in this issue of the *Texas Register,* the Board contemporaneously adopts amendments to §§133.3, 133.61, 133.65, 133.67 and 133.71.

The Board received comments for and against the proposed rules from 185 individuals. There were 79 commenters in opposition to the change. Some opposition comments expressed the desire to keep the experience prior to taking the PE exam to help the potential licensee retain more knowledge and to perform better on the exam itself. Other opposition commenters recognized the opportunity for learning and the inherent value of studying for the PE exam after engineering experience was obtained and thought it should remain unchanged. Another group of commenters stated that increasing the flexibility of the process lowers the rigor and would make the licensing process easier. One commenter opposed the rule change allowing 3 exam attempts in a four year window instead of 4 consecutive exam administrations for an approval.

The remaining comments received were in support of the proposal. Comments in support of the changes from current licensed Professional Engineers and certified Engineers In Training generally stated that the increased flexibility of decoupling would enhance the licensure process and encourage licensure of additional qualified people who would have otherwise been more restricted by the schedule of the application and exam process. The Board also received 3 comments from independent Texas engineering organizations in support of the proposal.

All comments were responded to by staff. The Board reviewed and considered all comments received. The Board felt that the increased flexibility of the process will have a positive effect on the engineering community and the public and will not result in a lowering of the standards for licensure or licensing of less qualified engineers. No changes were made to the rules as proposed.

The amendments are adopted pursuant to Texas Occupations Code §1001.202, which authorizes the Board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

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

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201600961
Lance Kinney, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: May 1, 2016
Proposal publication date: December 25, 2015
For further information, please call: (512) 440-7723

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PART 9. TEXAS MEDICAL BOARD

CHAPTER 195. PAIN MANAGEMENT CLINICS

22 TAC §195.1, §195.2

The Texas Medical Board (Board) adopts amendments to §195.1, concerning Definitions, and §195.2, concerning Certification of Pain Management Clinics, without changes to the proposed text as published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7373). The rules will not be republished.

The amendments are adopted in accordance with SB 1235, enacted by the 84th Texas Legislature. SB 1235 amended the Occupations Code so that individuals who are medical directors or physicians who are affiliated or associated with the pain management clinic in any capacity, including those that are engaged in supervision or delegation activities, are subject to the pain management clinic regulations.

The amendment to §195.1 adds new paragraph (4), inserting the definition of "Operator" from SB 1235. This addition was to insure consistency between the rule and statute.

The amendment to §195.2(a)(5) adds new subparagraph (C), stating violations of §§195 et al. and Chapter 168 of the Texas Occupations Code are subject to criminal prosecution, to be consistent with similar provision in SB 1235.

The amendment further adds language to §195.2(f) so that the practice of medicine includes but is not limited to all supervision and delegation activities related to the pain management clinic. The amendments to §195.2 are added to achieve consistency with SB 1235.

No comments were received regarding adoption of the amendments.

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 also adopted under the authority of Texas Occupations Code Annotated, Chapter 168; and SB 1235, 84th Legislature, R.S. (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 24, 2016.

TRD-201600915

Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: March 15, 2016
Proposal publication date: October 23, 2015
For further information, please call: (512) 305-7016

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CHAPTER 198. STANDARDS FOR USE OF INVESTIGATIONAL AGENTS

22 TAC §§198.1, 198.3, 198.4

The Texas Medical Board (Board) adopts amendments to §198.1, concerning Purpose; and §198.3, concerning Practice Guidelines for the Use of Investigational Agents; and new §198.4, concerning Use of Investigational Agents for Patients with Terminal Illnesses, without changes to the proposed text as published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7378). The rules will not be republished.

The amendments and new rule are adopted in accordance with House Bills 177 and 21, enacted by the 84th Texas Legislature. House Bill 177 amends the Education Code and the Health and Safety Code. Among other provisions, the bill establishes general requirements for adult stem cell use in health care. House Bill 21 amends the Health and Safety Code to establish the eligibility of a patient who has a terminal illness to access and use an investigational drug, biological product, or device, including requirements for a physician's recommendations and a patient's informed consent.

The amendment to §198.1 adds language stating that specific requirements set forth under new §198.4 are applicable only to terminal patients being treated with investigational agents.

The amendment to §198.3 replaces the term "protocol" with the term "clinical trial." This was to insure consistency between the language in HB 177 and the rule.

The language in new §198.4 reflects the requirements of HB 21 and makes clear that new §198.4 is limited to use of investigational agents by terminal patients.

No comments were received regarding adoption of the rules.

The amendments and new rule 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 and new rule are also adopted under the authority of Texas Occupations Code, Chapter 164, and HB 177 and HB 21, 84th Legislature R.S. (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 24, 2016.

TRD-201600916
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: March 15, 2016
Proposal publication date: October 23, 2015
For further information, please call: (512) 305-7016

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CHAPTER 200. STANDARDS FOR PHYSICIANS PRACTICING COMPLEMENTARY AND ALTERNATIVE MEDICINE

22 TAC §200.3

The Texas Medical Board (Board) adopts amendments to §200.3, concerning Practice Guidelines for the Provision of Complementary and Alternative Medicine, without changes to the proposed text as published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7380). The rule will not be republished.

The amendments to §200.3(7) revise the language under subparagraphs (A) - (C) so that the outlined ethical standards relating to physicians using conventional medical practices or complementary and alternative medicine treatment while engaged in the clinical investigation of new drugs and procedures are mandatory rather than discretionary. The changes are adopted to make consistent with other language in the introductory paragraph of the section making such ethical standards mandatory.

No comments were received regarding adoption of the amendments.

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 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 24, 2016.

TRD-201600917
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: March 15, 2016
Proposal publication date: October 23, 2015
For further information, please call: (512) 305-7016

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PART 32. STATE BOARD OF EXAMINERS FOR SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

CHAPTER 741. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

The State Board of Examiners for Speech-Language Pathology and Audiology (board) adopts amendments to §§741.1, 741.41, 741.44, 741.61 - 741.65, 741.81 - 741.85, 741.91, 741.104, 741.112, and 741.161, concerning speech-language pathologists and audiologists. The amended rules are adopted without changes to the proposed text as published in the September 25, 2015, issue of the *Texas Register* (40 TexReg 6554) and therefore the sections will not be republished.

BACKGROUND AND PURPOSE

The adopted amendments update the board's rules to add definitions, reflect current operations in processing and approving license applications, lower the educational requirement for Audiology Assistants, and clarify requirements in existing rules.

The amendments also revise for grammar and technical form.

SECTION-BY-SECTION SUMMARY

The amendments to §741.1 add the definitions for "caseload" and "supervisor," revise the definition of "assistant in audiology" to reflect the use of this term as it currently appears in other parts of the rules, and renumber the paragraphs.

The amendments to §741.41 require a licensee to report criminal history and other legal actions to the board.

The amendments to §741.44 clarify language and eliminate an exception that currently allows a supervisor to supervise more than four interns and assistants.

The amendments to §§741.61 - 741.65 clarify language, require an applicant to submit particular materials to the board, and eliminate inconsistencies. The amendments specify that an applicant must submit fingerprints to the Department of Public Safety, as is currently required in §741.142.

The amendments to §§741.81 - 741.83 and 741.85 clarify language, require an applicant to submit particular materials to the board, and eliminate inconsistencies. The amendments specify that an applicant must submit fingerprints to the Department of Public Safety, as is currently required in §741.142.

The amendments to §741.84 clarify language, require an applicant to submit particular materials to the board, and eliminate inconsistencies. The amendments specify that an applicant must submit fingerprints to the Department of Public Safety, as is currently required in §741.142. The amendments also lower the educational requirement for audiology assistants from a bachelor's degree to a high school diploma or equivalent.

The amendment to §741.91 corrects citations.

The amendment to §741.104 clarifies language.

The amendment to §741.112 eliminates redundant language.

The amendment to §741.161 clarifies language.

PUBLIC COMMENTS

The board received one written comment during the comment period from the Texas Academy of Audiology. The comment was in support of the rule changes. The board has reviewed the comment and prepared a response.

Comment: The Texas Academy of Audiology expressed support for requiring a high school diploma or equivalent rather than a bachelor's degree for audiology assistants, and commented that requiring a high school diploma is consistent with position statements from other industry groups.

Response: The board makes no change to the rules in response to this comment.

SUBCHAPTER A. DEFINITIONS

22 TAC §741.1

STATUTORY AUTHORITY

The amendments are authorized under Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce Occupations Code, Chapter 401.

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 29, 2016.

TRD-201601012
Vickie B. Dionne
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
Effective date: March 20, 2016
Proposal publication date: September 25, 2015
For further information, please call: (512) 776-6972

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SUBCHAPTER D. CODE OF ETHICS; DUTIES AND RESPONSIBILITIES OF SUPERVISORS

22 TAC §741.41, §741.44

STATUTORY AUTHORITY

The amendments are authorized under Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce Occupations Code, Chapter 401.

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-201601013
Vickie B. Dionne
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
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Proposal publication date: September 25, 2015
For further information, please call: (512) 776-6972

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SUBCHAPTER E. REQUIREMENTS FOR LICENSURE OF SPEECH-LANGUAGE PATHOLOGISTS

22 TAC §§741.61 - 741.65

STATUTORY AUTHORITY

The amendments are authorized under Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce Occupations Code, Chapter 401.

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-201601014
Vickie B. Dionne
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
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For further information, please call: (512) 776-6972

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SUBCHAPTER F. REQUIREMENTS FOR LICENSURE OF AUDIOLOGISTS

22 TAC §§741.81 - 741.85

STATUTORY AUTHORITY

The amendments are authorized under Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce Occupations Code, Chapter 401.

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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Vickie B. Dionne
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
Effective date: March 20, 2016
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For further information, please call: (512) 776-6972

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SUBCHAPTER G. REQUIREMENTS FOR DUAL LICENSURE AS A SPEECH-LANGUAGE PATHOLOGIST AND AN AUDIOLOGIST

22 TAC §741.91

STATUTORY AUTHORITY

The amendments are authorized under Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce Occupations Code, Chapter 401.

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 29, 2016.

TRD-201601016
Vickie B. Dionne
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
Effective date: March 20, 2016
Proposal publication date: September 25, 2015
For further information, please call: (512) 776-6972

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SUBCHAPTER H. FITTING AND DISPENSING OF HEARING INSTRUMENTS

22 TAC §741.104

STATUTORY AUTHORITY

The amendments are authorized under Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce Occupations Code, Chapter 401.

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 29, 2016.

TRD-201601017
Vickie B. Dionne
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
Effective date: March 20, 2016
Proposal publication date: September 25, 2015
For further information, please call: (512) 776-6972

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SUBCHAPTER I. APPLICATION PROCEDURES

22 TAC §741.112

STATUTORY AUTHORITY

The amendments are authorized under Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce Occupations Code, Chapter 401.

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 29, 2016.

TRD-201601018

Vickie B. Dionne
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
Effective date: March 20, 2016
Proposal publication date: September 25, 2015
For further information, please call: (512) 776-6972

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SUBCHAPTER L. LICENSE RENEWAL AND CONTINUING PROFESSIONAL EDUCATION

22 TAC §741.161

STATUTORY AUTHORITY

The amendments are authorized under Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce Occupations Code, Chapter 401.

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 29, 2016.

TRD-201601019
Vickie B. Dionne
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
Effective date: March 20, 2016
Proposal publication date: September 25, 2015
For further information, please call: (512) 776-6972

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PART 39. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

CHAPTER 850. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

SUBCHAPTER B. ORGANIZATION AND RESPONSIBILITIES

22 TAC §850.62

The Texas Board of Professional Geoscientists (TBPG, Board, or Appointed Board) adopts an amendment to 22 TAC §850.62 concerning the licensure and regulation of Professional Geoscientists. This amendment is adopted without changes from the proposed text as published in the November 27, 2015, issue of the *Texas Register* (40 TexReg 8438).

The Appointed Board adopts the amendment to more consistently use the defined terms of "professional geoscience" and "professional geoscience services" throughout the rules instead of "public geoscience services" and other similar phrases for consistency and clarity.

The adopted amendment to 22 TAC §850.62 removes the phrase "public geoscience services" in subsection (c) and replaces it with "professional geoscience services."

No comments were received regarding the proposed amendment.

The adopted amendment is authorized by Occupations Code §1002.151 which provides that the Board shall adopt and enforce rules consistent with the Texas Geoscience Practice Act (the Act); and by Occupations Code §1002.154 which provides that the Board shall enforce the Act.

The adopted amendment implements the Texas Occupations Code §§1002.151 and 1002.154.

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 24, 2016.

TRD-201600892
Charles Horton
Executive Director
Texas Board of Professional Geoscientists
Effective date: March 15, 2016
Proposal publication date: November 27, 2015
For further information, please call: (512) 936-4405

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CHAPTER 851. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS LICENSING AND ENFORCEMENT RULES

The Texas Board of Professional Geoscientists (TBPG, Board, or Appointed Board) adopts new §851.26 and amendments to §§851.10, 851.20, 851.30, 851.32, 851.101, 851.102, 851.105, 851.107, 851.108, 851.112, 851.152, and 851.156 with changes to the proposed text as published in the November 27, 2015, issue of the *Texas Register* (40 TexReg 8439). The TBPG adopts amendments to §§851.23, 851.104, 851.106, 851.153, and 851.157 without changes to the proposal.

The TBPG adopts new rule §851.26 to implement the provisions of Texas Occupations Code (TOC) Chapter 55, Licensing of Military Service Members, Military Veterans, and Military Spouses. TOC Chapter 55 requires that agencies adopt rules necessary to implement certain provisions regarding that Chapter. These laws provide licensing procedures and certain benefits to Military Service Members, Military Veterans, and Military Spouses who apply for an occupational license in the State of Texas.

The Appointed Board adopts amendments to §§851.10, 851.20, 851.23, 851.30, 851.101, 851.102, 851.104 - 851.108, 851.112, 851.152, 851.153, 851.156, and 851.157 to better define the terms "professional geoscience" and "professional geoscience services" in §851.10, and to make corresponding changes to the rules to utilize these defined terms of "professional geoscience" or "professional geoscience services" more consistently throughout the rules for clarification.

Adopted amendments to §851.20 to additionally correct citations in subsection (b) to refer to the correct form number; correct a reference in subsection (k) to correctly refer to subsection (p) instead of subsection (o); clean up punctuation in subsection (q); and clarify wording in subsection (r) to refer applicants who are military service members, military veterans or military spouses to new rule §851.26 for additional licensing provisions.

Adopted amendments to §851.32 add language in subsection (n) to allow licensees who are impacted by a long-term physical disability or illness (of the licensee or a family member or other person) to request exemption of the continuing education requirements of licensure for a specific renewal period or periods. Language is also added that supporting documentation must be furnished to the TBPG; that the executive director shall review circumstances and documentation in order to make a decision regarding the exemption; and that a licensee may appeal a decision of the executive director to an appropriate Committee or to the full Board, as appropriate.

Adopted amendments to §851.156 also add language to clarify that a Professional Geoscientist (P.G.) specifically seals geoscience "documents" as opposed to geoscience "work." Amendments also clarify that a P.G. shall sign, seal and date either the original title sheet or a signature page of geoscience documents. Adopted amendments also remove as unnecessary the phrase "reports, or the signature page when a title sheet is not used" and further clarify that all unbound geoscience documents, including, but not limited to, research reports, opinions, recommendations, evaluations, addenda, and geoscience software, shall bear the Professional Geoscientist's printed name, date, signature and the designation "P.G." or other terms allowed under §1002.251 of the Act, unless the geoscience service is exempt under §1002.252 of the Texas Occupations Code.

Adopted new §851.26(a) adds language that defines "active duty," "armed forces of the United States," "military service member," "military spouse," and "military veteran." Subsection (b) clarifies that the applicant shall provide documentation of the applicant's status as a military service member, military veteran, or military spouse. Subsection (c) specifies that upon request, an applicant shall provide acceptable proof of current licensure issued by another jurisdiction, as well as proof that the licensing requirements of that jurisdiction are substantially equivalent to the licensing requirements of this state. Subsection (d) provides that an individual who holds a P.G. license or Geoscientist-in-Training (GIT) certification issued by the TBPG is exempt from any increased fee or other penalty imposed for failing to renew the license in a timely manner, if the individual establishes to the satisfaction of TBPG that the individual failed to renew the license in a timely manner because the individual was serving as a military service member. Subsection (e) specifies that a military service member who holds a P.G. license or a GIT certification is entitled to two years of additional time to complete any continuing education requirement and any other requirement related to the renewal of the military service member's P.G. license or GIT certification. Subsection (f) provides that a license may be issued to an applicant who is a military service member, military veteran, or a military spouse and who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for a P.G. license or a GIT certification in Texas, or who within the five years preceding the application date held the P.G. license or GIT certification in Texas. Subsection (g) authorizes the Executive Director to waive any prerequisite to obtaining a license for an applicant described in subsection (f) after reviewing the applicant's credentials. Subsection (h) allows a military service member, military veteran, or a military spouse who does not meet criteria in subsection (f) to provide an alternate demonstration of competency to meet the requirements for obtaining a P.G. license or a GIT certification. Subsection (i) provides an alternate method by which an applicant who is a military service member, military veteran, or a military spouse may demonstrate competency, including certain service, experience, training, or education obtained in the military that is verified and that is relevant to the practice of professional geoscience. Subsection (j) specifies that as soon as practicable after a military service member, military veteran or military spouse files an application for a license, Board staff shall process the application and issue a license to an applicant who qualifies for the license under this section. A license issued under this section may not be a provisional license and must confer the same rights, privileges, and responsibilities as a license not issued under this section. Subsection (k) provides that rules adopted under this section may not apply to an applicant who holds a restricted license issued by another jurisdiction, whose license or certification has been subject to disciplinary action in another jurisdiction, or who has an unacceptable criminal history. Subsection (l) states that upon issuance of a license under subsection (g) of this section, Board staff shall notify the new licensee of the requirements for the license holder to renew the license. A license issued under paragraph (g) of this section shall be valid for a term of 12 months from the end of the month the license is issued. Subsection (m) provides that TBPG shall waive the license application and examination fees paid to the state for an applicant who is a military service member or military veteran whose military service, training, or education substantially meets all of the requirements for the license; or for an applicant who is a military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state. Subsection (n) addresses the applicability of the rule to an application for a license, depending on the date the application for license is filed with TBPG.

Adopted amendments to §851.10 change language in paragraph (9) to remove "public" geoscience services and replace it with "professional" geoscience services to be consistent with the defined terms; insert the word "professional" before the term "geoscience services" in paragraph (14); remove the definition of "professional geoscience" in paragraph (30); revise the definition of "geoscience services," which also includes the terms "professional geoscience services" and "professional geoscience" in paragraph (31) and add a sentence at the end stating that "these services may include consulting, investigating, evaluating, analyzing, planning, mapping, and inspecting geoscientific work, and the responsible supervision of those tasks," to reflect the statutory definition of geoscience found in the Act; move previous paragraph (31) to be new paragraph (25) and renumber the remaining definitions accordingly; replace the phrase "geoscientific work" in new paragraphs (33) and (37) with the phrases "professional geoscience services" or "geoscience services" for consistency.

Adopted amendments to §851.20 replace the phrase "geoscientific work" in subsection (a)(2) with the phrase "geoscience services"; change a reference from Form "V" to Form "VI" in subsection (b); change an incorrect reference in subsection (k) from (o) to (p); add the word "and" at the end of subsection (q)(1) and remove the word "and" from the end of (q)(2) along with the semicolon and adding a period at the end of the sentence; and remove language in subsection (r) that states that "the TBPG shall adhere to the provisions of TOC Chapter 55 'License While on Military Duty and for Military Spouse' when considering applications for licensure and examination requests submitted by individuals for which those provisions apply" and replace it with a statement that says "An applicant who is a military service mem-

ber, military veteran or a military spouse is directed to TBPG rule §851.26 of this chapter for additional licensing provisions" to more accurately specify where the licensing provisions can be found in TBPG rules.

Adopted amendments to §851.23 and §851.30 replace the phrase "geoscience work" with "geoscience services" throughout; remove the term "public" before geoscientific services and replace with "professional" geoscience services in subsection (d)(2); add the word "professional" in subsection (g) before the term geoscience; and add "professional geoscience" services to subsection (i) removing the term "geoscientific" services.

Adopted amendment to §851.32 changes language in subsection (n) to clarify that a licensee may be exempt from the professional development educational requirements "for a specific renewal period or periods." It also changes wording in subsection (n)(4) to read that "A licensee who is impacted by a long term physical disability or illness (of the licensee or a family member or other person) may be exempt. It moves a sentence from subsection (n)(4) to new subsection (n)(5) which states that "supporting documentation must be furnished to TBPG." Further language is added in subsection (n)(5) to state that "the Executive Director shall review circumstances and documentation and make a decision. A licensee may appeal a decision of the Executive Director to an appropriate Committee or the full Appointed Board, as appropriate."

Adopted amendments to §851.101 add the word "professional" before the term geoscience in subsection (a); replace the phrase "professional practice of geoscience" with "practice of professional geoscience" in subsection (b); add the term "geoscience" before the term services in two places; remove the word "geoscientific" in subsection (g); and add the words "professional geoscience" before the word "services," and remove the word "geoscientific" in subsection (h).

Adopted amendments to §851.102 add the word "geoscience" before the term "services" in subsection (c).

Adopted amendments to §851.104 add the term "services" and remove the word "work" in subsection (c); and replace the word "geoscientific" with "geoscience" in subsections (d) and (e).

Adopted amendment to §851.105 adds the word "geoscience" to the phrase "professional service" to clarify the type of service.

Adopted amendments to §851.106 add the word "professional" to the phrase "practice of geoscience" in subsection (b)(2)(A) - (B); replace the word "geoscientific" with "geoscience" in subsection (f); and add the word "geoscience" in subsection (f)(3).

Adopted amendment to §851.107 adds the words "professional geoscience" to replace the word "geosciences" in subsection (b).

Adopted amendment to §851.108 changes the phrase "professional practice of geoscience" to "practice of professional geoscience" in subsection (b).

Adopted amendments to §851.112 replace "professional practice" with the phrase "professional geoscience services" in subsection (a)(7); add the word "professional" to the phrase "practice of geoscience" in subsection (a)(8); and replace the term "geoscientific services" with "professional geoscience services" in subsection (d)(4).

Adopted amendment to §851.152 adds the word "professional" to the phrase "public practice of geoscience" in subsection (b).

Adopted amendment to §851.153 replaces the word "work" with the word "services" after the term "geoscience."

Adopted amendments to §851.156 replace the phrase "geoscience work" with "professional geoscience services" in subsection (a); replace the term "work" with the phrase "geoscience services" in subsection (a); add language to subsection (c) to indicate that a P.G. shall only seal "documents that contain geoscience services" as opposed to sealing "work"; clarify that upon sealing, the P.G. takes full professional responsibility for "geoscience services" that "are provided through the sealed document" removing the previous term "work" from subsection (c); remove the phrase "or work" from subsections (d) and (e); replace "geoscience work" with the word "document" in subsection (f); replace the word "work" with the word "document" or "documents" throughout subsections (g) and (k); change the first phrase in subsection (l) to state that "The Professional Geoscientist shall sign, seal and date the original title sheet" adding the phrase "or a signature page" of geoscience "documents" and remove the term "reports, or the signature page when a title sheet is not used." Also in subsection (l), the term "work" is replaced by "services"; the word "other" is replaced by the word "unbound" referring to geoscience "documents" which need to be sealed; the phrase "documents produced for litigation" is deleted; and the word "work" is replaced by "geoscience service." In subsection (m), "work" is again replaced by "geoscience services" in two instances. In subsection (n), "work" is replaced by "documents" and in another instance is replaced by "services." In subsection (q), "work product" is replaced by "document." In subsection (s), the word "work" is replaced throughout by the terms "document" or "original document."

Adopted amendment to §851.157 replaces the word "geoscientific" with the word "geoscience" in subsection (a).

No comments were received regarding the proposed amendments and new rule.

SUBCHAPTER A. DEFINITIONS

22 TAC §851.10

The adopted amendments are authorized by Texas Occupations Code §1002.151 which provides that the Board shall adopt and enforce rules consistent with the Texas Geoscience Practice Act (the Act); by Texas Occupations Code §1002.154 which provides that the Board shall enforce the Act; and by Texas Occupations Code Chapter 55 which provides for licensing of military service members, military veterans, and military spouses.

The adopted amendments implement the Texas Occupations Code §§1002.151, 1002.154, and §§55.001 - 55.009, as amended through the 2015 Texas Legislative Session.

§851.10. Definitions.

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

(1) Act--Texas Occupations Code, Chapter 1002, cited as the Texas Geoscience Practice Act.

(2) Accredited institutions or programs--An institution or program which holds accreditation or candidacy status from an accreditation organization recognized by the Council for Higher Education Accreditation (CHEA) or other appropriate accrediting entity accepted by the Appointed Board.

(3) Address of record--In the case of an individual or firm licensed, certified, or registered by the Texas Board of Professional

Geoscientists (TBPG), the address which is filed by the licensee with the TBPG.

(4) Advertising or Advertisement--Any non-commercial or commercial message, including, but not limited, to verbal statements, bids, web pages, signage, provider listings, and paid advertisement which promotes the services of a licensee.

(5) Applicant--An individual making application for a geoscience license or Geoscientist-in-Training (GIT) certification; a firm and/or the Authorized Official of a Firm making application for a Geoscience Firm registration.

(6) Application--The forms, information, attachments, and fees necessary to obtain a license as a Professional Geoscientist, the registration of a firm, or a certification as a Geoscientist-in-Training (GIT).

(7) Appointed Board--Those persons who are appointed by the Governor and confirmed by the Senate and qualify for office who may deliberate, vote, and be counted as a member in attendance of the Texas Board of Professional Geoscientists.

(8) ASBOG®--National Association of State Boards of Geology. ASBOG® serves as a connective link among the individual state geologic registration licensing boards for the planning and preparation of uniform procedures and the coordination of geologic protective measures for the general public. One of ASBOG®'s principal services is to develop standardized written examinations for determining qualifications of applicants seeking licensure as professional geologists. State boards of registration are provided with uniform examinations that are valid measures of competency related to the practice of the profession.

(9) Authorized Official of a Firm (AOF)--The individual designated by a Geoscience Firm to be responsible for the process of submitting the application for the initial registration of the firm with the TBPG; ensuring that the firm maintains compliance with the requirements of registration with the TBPG; ensuring that the firm complies with all laws, codes, rules, and standards applicable to the public practice of geoscience; ensuring that the firm renews its registration status as long as the firm offers or provides professional geoscience services; and communicating with the TBPG regarding any matter.

(10) Board staff--The Executive Director and all other staff employed by the Texas Board of Professional Geoscientists (administrative, investigative, and other support staff, etc.).

(11) Certificant--An individual holding a certificate as a Geoscientist-in-Training.

(12) Cheating--Attempting to obtain, obtaining, providing, or using answers to examination questions by deceit, fraud, dishonesty, or deception.

(13) Complainant--Any individual who has submitted a complaint to the TBPG, as provided in this chapter.

(14) Complaint--An allegation or allegations of wrongful activity related to the practice or offering of professional geoscience services in Texas. A complaint is within the TBPG's jurisdiction if the complaint alleges a violation of statutes or rules applicable to the public practice of geoscience or the requirements of licensure of a Professional Geoscientist (P.G.) or registration by an individual, firm, or other legal entity.

(15) Council of Soil Scientist Examiners (CSSE)--The purpose of the Council of Soil Science Examiners is to create, score and maintain examinations for State Soil Scientists licensing programs. CSSE develops professional criteria to confirm that individuals meet and exceed minimum qualifications to practice the profession.

(16) Default--The failure of the Respondent to respond in writing to a notice or appear in person or by legal representative on the day and at the time set for hearing in a contested case or informal conference, or the failure to appear by telephone, e-mail, fax or other electronic media in accordance with the notice of hearing or notice of informal conference. Default results in the actions being taken that were described in the notice of the hearing for a contested case or informal conference in the event of a failure to appear.

(17) Direct supervision--Critical watching, evaluating, and directing of geoscience activities with the authority to review, enforce, and control compliance with all geoscience criteria, specifications, and procedures as the work progresses. Direct supervision will consist of an acceptable combination of: exertion of significant control over the geoscience work, regular personal presence, reasonable geographic proximity to the location of the performance of the work, and an acceptable employment relationship with the supervised individual(s).

(18) Discipline--One of three recognized courses of study under which an individual may qualify for a license as a Professional Geoscientist. Geoscience is comprised of the following disciplines: geology, geophysics, and soil science.

(19) Executive Director--The individual appointed by the Appointed Board who shall be responsible for managing the day to day affairs of the board, in accordance with the Act.

(20) Filed date--The date that the document has been received by the TBPG or, if the document has been mailed to the TBPG, the postmark date of the document.

(21) Geology--The discipline of geoscience that addresses the science of the origin, composition, structure, and history of the Earth and its constituent soils, rocks, minerals, fossil fuels, solids, fluids and gasses, and the study of the natural and introduced agents, forces, and processes that cause changes in and on the Earth, and is applied with judgment to develop ways to utilize, economically, those natural and introduced agents, forces, and processes for the benefit of mankind. There are many subdivisions of geology, which include, but are not limited to, the following: historical geology, physical geology, economic geology, mineralogy, paleontology, structural geology, mining geology, petroleum geology, physiography, geomorphology, geochemistry, hydrogeology, petrography, petrology, volcanology, stratigraphy, engineering geology, and environmental geology.

(22) Geophysics--Refers to that science which involves the study of the physical Earth by means of measuring its natural and induced fields of force, and its responses to natural and induced energy or forces, the interpretation of these measurements, applied with judgment to benefit or protect the public.

(23) Geoscience--The science of the Earth and its origin and history, the investigation of the Earth's environment and its constituent soils, rocks, minerals, fossil fuels, solids, and fluids, and the study of the natural and introduced agents, forces, and processes that cause changes in and on the Earth as applied with professional judgment to develop ways to utilize, economically, those natural and introduced agents, forces, and processes for the benefit of the public.

(24) Geoscience Firm--Any entity that engages in or offers to engage in the practice of professional geoscience before the public in the State of Texas. This term includes a sole practitioner registered with TBPG as a Geoscience Firm, a sole proprietor registered as a Geoscience Firm, co-partnership, corporation, partnership, limited liability company, joint stock association, or other business organization.

(25) Geoscience services (also professional geoscience services, and professional geoscience)--Services which must be performed by or under the direct supervision of a Professional Geoscientist and which meet the definition of the practice of geoscience as defined in the Texas Occupations Code, §1002.002(3). A service shall be conclusively considered a professional geoscience service if it is delineated in that section; other services requiring a Professional Geoscientist by contract, or services where the adequate performance of that service requires a geoscience education, training, or experience in the application of special knowledge or judgment of the geological, geophysical or soil sciences to that service shall also be conclusively considered a professional geoscience service. These services may include consulting, investigating, evaluating, analyzing, planning, mapping, and inspecting geoscientific work, and the responsible supervision of those tasks.

(26) License--The legal authority granted the holder to actively practice geoscience upon meeting the requirements as set out in the Act and this chapter.

(27) License certificate--Any certificate issued by the TBPG showing that a license, registration, or certificate has been granted by the TBPG. A certificate is not valid unless it is accompanied by a card issued by the TBPG which shows the expiration date of the license, registration or certification.

(28) License status--The status of a Professional Geoscientist license, Geoscience Firm registration, or GIT certification is one of the following:

(A) Current license--A license, registration, or certification that has not expired.

(B) Expired license--A Professional Geoscientist license that has been expired for less than three years and is therefore renewable, or a Geoscience Firm registration or GIT certification that has been expired for less than one year and is therefore renewable.

(C) Permanently expired license--A license, registration, or certification that is no longer renewable.

(29) Licensee--An individual or other entity holding a current Professional Geoscientist license, GIT certificate, or firm registration.

(30) Person--Any individual, firm, partnership, corporation, association, or other legal public or private entity, including a state agency or governmental subdivision.

(31) Professional Geoscientist or P.G.--An individual who holds a license as a Professional Geoscientist issued by the TBPG.

(32) Practice for the public--

(A) Providing professional geoscience services:

(i) For a governmental entity in Texas;

(ii) To comply with a rule established by the State of Texas or a political subdivision of the State of Texas; or

(iii) For the public or a firm or corporation in the State of Texas if the practitioner accepts ultimate liability for the work product; and

(B) Does not include services provided for the express use of a firm or corporation by an employee or consultant if the firm or corporation assumes the ultimate liability for the work product.

(33) The Public--Any individual(s), client(s), business or public entities, or any member of the general population whose normal course of life might reasonably include an interaction of any sort with or be impacted by professional geoscience services.

(34) Registered firm--A firm that is currently registered with the TBPG.

(35) Registrant--An individual whose sole-proprietorship is currently registered with the TBPG or a firm that is currently registered with the TBPG.

(36) Respondent--Any individual or firm, licensed or unlicensed, who has been charged with violating any provision of the Act or a rule or order issued by the Appointed Board.

(37) Responsible charge--The independent control and direction of geoscience services or the supervision of geoscience services by the use of initiative, skill, and independent judgment.

(38) Rule or Board Rule--State agency rules adopted by the Appointed Board and as published in the Texas Administrative Code, Title 22, Part 39, Chapters 850 and 851.

(39) Soil Science--Soil science means the science of soils, their classification, origin and history, the investigation and interpretation of physical, chemical, morphological, and biological characteristics of the soil including, among other things, their ability to produce vegetation and the fate and movement of physical, chemical, and biological contaminants.

(40) Sole-proprietorship--A single owned Professional Geoscientist's geoscience business that has no separate legal existence from its owner.

(41) TBPG--The Texas Board of Professional Geoscientists, as used in this chapter, is a reference to the whole or any part of the entity that is the Texas Board of Professional Geoscientists.

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 24, 2016.

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Charles Horton
Executive Director
Texas Board of Professional Geoscientists
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For further information, please call: (512) 936-4405

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SUBCHAPTER B. P.G. LICENSING, FIRM REGISTRATION, AND GIT CERTIFICATION

22 TAC §§851.20, 851.23, 851.26, 851.30, 851.32

The adopted amendments and new section are authorized by Texas Occupations Code §1002.151 which provides that the Board shall adopt and enforce rules consistent with the Texas Geoscience Practice Act (the Act); by Texas Occupations Code §1002.154 which provides that the Board shall enforce the Act; by Texas Occupations Code §1002.302 which authorizes the Board to require license holders to participate in continuing professional education on a periodic basis; by Texas Occupations Code §1002.351 which authorizes the Board to adopt rules relating to the public practice of geoscience by a firm or

corporation; and by Texas Occupations Code Chapter 55 which provides for licensing of military service members, military veterans, and military spouses.

The adopted amendments and new section implement the Texas Occupations Code §§1002.151, 1002.154, 1002.251, 1002.256, 1002.302, 1002.351, and §§55.001 - 55.009, as amended through the 2015 Texas Legislative Session.

§851.20. Professional Geoscientist Licensing Requirements and Application Procedure.

(a) Requirements for licensure:

(1) Passing score on an examination or examinations required by the Texas Board of Professional Geoscientists (TBPG) covering the fundamentals and practice of the appropriate discipline of geoscience documented as specified in §851.21 of this chapter;

(2) A minimum of five years of qualifying work experience during which the applicant has demonstrated being qualified to assume responsible charge of geoscience services documented and verified through professional references as specified in §851.23 of this chapter and Texas Occupations Code (TOC) §1002.256;

(A) A total of one year of qualifying work experience credit may be granted for each full-time year of graduate study in a discipline of geoscience, not to exceed two years;

(B) The Appointed Board may accept qualifying work experience in lieu of the education requirement as provided in TOC §1002.255;

(3) Good moral character as demonstrated by the submission of a minimum of five reference statements submitted on behalf of the applicant attesting to the good moral and ethical character of the applicant as specified in §851.24 of this chapter or as otherwise determined by the Appointed Board;

(4) Academic requirements for licensure as specified in TOC §1002.255 and §851.25 of this chapter; and

(5) Supporting documentation of any license requirement, as determined by Board staff or the Appointed Board, relating to criminal convictions as specified in §851.108 of this chapter; relating to substance abuse issues as specified in §851.109 of this chapter; and relating to issues surrounding reasons the Appointed Board may deny a license as specified in the Geoscience Practice Act at TOC §1002.401 and §1002.402.

(b) An applicant may request a waiver of any licensure requirement by submitting a Waiver Request (Form VI) and any additional information needed to substantiate the request for waiver with the application. If the Appointed Board determines that the applicant meets all the other requirements, the Appointed Board may waive any licensure requirement except for the payment of required fees.

(c) An application is active for one year including the date that it is filed with the Appointed Board.

(d) Professional Geoscientist application procedure. To be eligible for a Professional Geoscientist license under this chapter, an applicant must submit or ensure the transmission (as applicable) of the following to the TBPG:

(1) A completed, signed, notarized application for licensure as a Professional Geoscientist;

(2) Documentation of having passed an examination as specified in §851.21 of this chapter;

(3) Documentation of having met the experience requirements as specified in §851.23 of this chapter;

(4) A minimum of five (5) reference statements as specified in §851.24 of this chapter;

(5) Official transcript(s), as specified in §851.25 of this chapter;

(6) The application/first year licensing fee as specified in §851.80(b) of this chapter;

(7) Verification of every license, current or expired, in any regulated profession related to the public practice of geoscience in any jurisdiction; and

(8) Any written explanation and other documentation as required by instructions on the application or as communicated by Board staff, if applicable.

(e) Any transcripts, evaluations, experience records or other similar documents submitted to the TBPG in previous applications may be included in a current application provided the applicant requests its use in writing at the time the application is filed and the Executive Director authorizes its use.

(f) An application may be forwarded to the Appointed Board at the Executive Director's discretion.

(g) Obtaining or attempting to obtain a license by fraud or false misrepresentation is grounds for an administrative sanction and/or penalty.

(h) An applicant who is a citizen of another country and is physically present in this country shall show sufficient documentation to the TBPG to verify the immigration status for the determination of their eligibility for a professional license in accordance with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(i) Applications are not reviewed until the application and fee have been received in the TBPG office. Applicants are initially notified of any deficiencies in the application within approximately thirty (30) days after the receipt of the application and fee.

(j) An applicant should respond to a deficiency notice within forty-five (45) days from the date of notification for applicants to correct deficiencies. If an applicant does not respond to a deficiency notice or does not ensure that necessary documents are provided to the TBPG office, the application will expire as scheduled one year after the date it became active.

(k) Upon receipt of all required materials and fees and satisfying all requirements in this section, the applicant shall be licensed and a unique Professional Geoscientist license number shall be assigned to the license. A new license shall be set to expire at the end of the calendar month occurring one year after the license is issued. Board staff shall send a new license certificate, initial license expiration card, and an initial wallet license expiration card as provided in subsection (p) of this section.

(l) An original license is valid for a period of one year from the date it is issued. Upon the first timely renewal of a license, the renewal period shall be from the date the license is renewed until the last day of the next birth month for the licensee. A license that is renewed late (one day after the expiration date of the license through the end of the 36th month past the expiration date of the license) is renewed in accordance to the rules set forth in §851.28 of this chapter.

(m) A license number is not transferable.

(n) Any violation of the law or the rules and regulations resulting in disciplinary action for one license may result in disciplinary action for any other license.

(o) Altering a license wall certificate, certificate expiration card, or wallet expiration card in any way is prohibited and is grounds for a sanction and/or penalty.

(p) The Professional Geoscientist license is the legal authority granted the holder to actively practice geoscience upon meeting the requirements as set out in the Act and this chapter. When a license is issued, a license wall certificate, the first license certificate expiration card, and the first wallet license card are provided to the new licensee.

(1) The license wall certificate shall bear the name of the licensee, the licensee's unique Professional Geoscientist license number, the discipline in which the individual is licensed, and the date the license was originally issued.

(2) The license wall certificate is not valid proof of licensure unless the license certificate expiration card is accompanying the license certificate and the date on the license certificate card is not expired.

(3) The license certificate expiration card shall bear the name of the licensee, the licensee's unique Professional Geoscientist license number, and the date the license will expire, unless it is renewed.

(4) The wallet license card shall bear the name of the licensee, the licensee's unique Professional Geoscientist license number, the discipline in which the individual is licensed, and the date the license will expire, unless it is renewed.

(q) Once the requirements for licensure have been satisfied and the new license and license certificate have been issued, within sixty (60) days of notification the new licensee must then:

(1) Obtain a seal and submit TBPG Seal Submission (Form X) to the TBPG; and

(2) Register as a Geoscience Firm, if appropriate, as described in §851.30 of this chapter.

(r) An applicant who is a military service member, military veteran or a military spouse is directed to TBPG rule §851.26 of this chapter for additional licensing provisions.

§851.26. Licensing of Military Service Members, Military Veterans, and Military Spouses

(a) This section sets out licensing procedures for military service members, military veterans, and military spouses required under Texas Occupations Code, Chapter 55 (relating to Licensing of Military Service Members, Military Veterans, and Military Spouses). For purposes of this section:

(1) "Active Duty" means current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, as defined by §437.001, Government Code, or similar military service of another state.

(2) "Armed Forces of the United States" means the army, navy, air force, coast guard, or marine corps of the United States or a reserve unit of one of those branches of the armed forces.

(3) "Military service member" means a person who is on active duty.

(4) "Military spouse" means a person who is married to a military service member.

(5) "Military veteran" means a person who has served on active duty and who was discharged or released from active duty.

(b) An applicant shall provide documentation of the applicant's status as a military service member, military veteran, or military spouse. Acceptable documentation includes, but is not limited to, copies of official documents such as military service orders, marriage licenses, and military discharge records. The application of a person who fails to provide documentation of his or her status shall not be processed under the provisions of this section.

(c) Upon request, an applicant shall provide acceptable proof of current licensure issued by another jurisdiction. Upon request, the applicant shall provide proof that the licensing requirements of that jurisdiction are substantially equivalent to the licensing requirements of this state.

(d) An individual who holds a P.G. license or a GIT Certification issued by TBPG is exempt from any increased fee or other penalty imposed for failing to renew the license in a timely manner if the individual establishes to the satisfaction of TBPG that the individual failed to renew the license in a timely manner because the individual was serving as a military service member.

(e) A Military Service Member who holds a P.G. license or a GIT certification is entitled to two years of additional time to complete any continuing education requirement and any other requirement related to the renewal of the military service member's P.G. license or GIT certification.

(f) The TBPG may issue a license to an applicant who is a military service member, military veteran, or a military spouse and who:

(1) Holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for a P.G. license or a GIT certification in Texas; or

(2) Within the five years preceding the application date held the P.G. license or GIT certification in Texas.

(g) The executive director may waive any prerequisite to obtaining a license for an applicant described by subsection (f) after reviewing the applicant's credentials.

(h) An applicant who is a military service member, military veteran, or a military spouse and who does not meet criteria in subsection (f) may provide an alternate demonstration of competency to meet the requirements for obtaining a P.G. license or a GIT certification.

(i) TBPG may accept as an alternate method of demonstrating competence certain service, experience, training, or education obtained in the military that is verified and that is relevant to the practice of professional geoscience.

(j) As soon as practicable after a military service member, military veteran or military spouse files an application for a license, Board staff shall:

(1) Process the application; and

(2) Issue a license to an applicant who qualifies for the license under this section. A license issued under this subsection may not be a provisional license and must confer the same rights, privileges, and responsibilities as a license not issued under this section.

(k) This section may not apply to an applicant who:

(1) Holds a restricted license issued by another jurisdiction;

(2) Has held a license that was subject to disciplinary action in another jurisdiction; or

(3) Has an unacceptable criminal history under the Texas Geoscience Practice Act, rules of the Board, or under Texas Occupations Code Chapter 53, related to Consequences of Criminal Conviction.

(l) Upon the issuance of a license under subsection (g) of this section, Board staff shall notify the new licensee of the requirements for the license holder to renew the license. A license issued under subsection (g) shall be valid for a term of 12 months from the end of the month the license is issued.

(m) TBPG shall waive the license application and examination fees paid to the state for an applicant who is:

(1) A military service member or military veteran whose military service, training, or education substantially meets all of the requirements for the license; or

(2) A military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state.

(n) This section applies to an application for license filed with the TBPG on or after January 1, 2016, except for subsection (m), which applies to an application filed on or after September 1, 2015.

§851.30. Firm Registration.

(a) Registration required. Unless an exemption applies, as outlined in Texas Occupations Code §1002.351(b), a firm or corporation may engage in the public practice of geoscience only if the firm is currently registered with the TBPG; and

(1) The geoscience services are performed by, or under the supervision of, a Professional Geoscientist who is in responsible charge of the work and who signs and seals all geoscientific reports, documents, and other records as required by this chapter; or

(2) The business of the firm includes the public practice of geoscience as determined by TBPG rule and a principal of the firm or an officer or director of the corporation is a Professional Geoscientist and has overall supervision and control of the geoscience services performed in this state. As provided in §851.10(24) of this chapter, the term firm includes a sole practitioner registered with TBPG as a Geoscience Firm, a sole proprietor registered as a Geoscience Firm, co-partnership, corporation, partnership, limited liability company, joint stock association, or other business organization. For the purposes of this section, the term public includes, but is not limited to, political subdivisions of the state, business entities, and individuals. This section does not apply to an engineering firm that performs service or work that is both engineering and geoscience.

(b) Unless registered by the TBPG or exempt from registration under Texas Occupations Code §1002.351 or elsewhere in this section, an individual or firm may not represent to the public that the individual or firm is a Professional Geoscientist or is able to perform geoscience services or prepare a geoscientific report, document, or other record that requires the signature and seal of a license holder under Texas Occupations Code §1002.263(b).

(c) A currently licensed P.G. who offers services as an unincorporated sole proprietor is exempt from the firm registration requirements in this section. A P.G. who is exempt from the firm registration requirements under this section and who offers services under an assumed name must report the assumed name to the TBPG. A P.G. who is otherwise exempt from the firm registration requirements under this section may choose to register as a Geoscience Firm and pay the current Geoscience Firm registration fee.

(d) Registration requirements. In order to be eligible to register as a Geoscience Firm, the firm must:

(1) Affirm and demonstrate that the firm is an unincorporated sole-proprietorship or another business entity that offers or performs work that includes the public practice of geoscience;

(2) Identify an Authorized Official of a Firm who shall be responsible for submitting the application for the initial registration of the firm with the TBPG; ensuring that the firm maintains compliance with the requirements of registration; ensuring that the firm complies with all laws, codes, rules, and standards applicable to the public practice of geoscience; ensuring that the firm renews its registration status as long as the firm offers or provides professional geoscience services; and communicating with the TBPG regarding any other necessary matter;

(3) Operate under a business model such that:

(A) The geoscience services are performed by, or under the supervision of, a licensed Professional Geoscientist who is in responsible charge of the work and who signs and seals all geoscientific reports, documents, and other records as required by this chapter; or

(B) The principal business of the firm is the public practice of geoscience as determined by TBPG rule and a principal of the firm or an officer or director of the corporation is a licensed Professional Geoscientist and has overall supervision and control of the geoscience services performed in this state;

(4) Identify the business model and the Professional Geoscientist who fulfills the role of the licensed Professional Geoscientist in paragraph (3) of this subsection;

(5) Unless the firm is an unincorporated sole-proprietorship, a firm seeking registration with the TBPG must register the firm with the Office of the Secretary of State (SOS) and obtain a certificate of authority. If the firm operates under a name other than that which is filed with the SOS, an Assumed Name Certificate must be filed with the County Clerk. A firm's SOS certificate of authority number and all Assumed Name Certificate instrument numbers must be provided to the TBPG upon initial application. If the firm is a sole-proprietorship and the firm operates under a name that does not include the last name of the individual sole proprietor, the firm shall file an Assumed Name Certificate with the County Clerk;

(6) Submit an Initial Firm Registration Application (Form C), in accordance to the procedures outlined in subsection (e) of this section;

(7) Upon initial application, affirm that the licensed Professional Geoscientist performing or supervising the geoscience services for a Geoscience Firm is an employee. A Geoscience Firm shall provide evidence of employment status upon request of the Board staff or an Appointed Board Member.

(e) Firm Registration Application Process.

(1) The Authorized Official of a Firm shall complete and submit, along with the required application fee, the form furnished by the TBPG which includes, but is not limited to, the following information listed in subparagraphs (A) - (E) of this paragraph:

(A) The name, address, and phone number of the firm offering to engage or engaging in the practice of professional geoscience for the public in Texas;

(B) The name, position, address, and phone numbers of each officer or director;

(C) The name, address and current active Texas Professional Geoscientist license number of each employee performing geoscience services for the public in Texas on behalf of the firm;

(D) The name, location, and phone numbers of each subsidiary or branch office offering to engage or engaging in the practice of professional geoscience for the public in Texas, if any; and

(E) A signed statement attesting to the correctness and completeness of the application.

(2) Upon receipt of all required materials and fees and having satisfied requirements in this section, the firm shall be registered and a unique Geoscience Firm registration number shall be assigned to the firm registration. The new firm registration shall expire at the end of the calendar month occurring one year after the firm registration is issued.

(3) An application is active for one year including the date that it is filed with the TBPG. After one year an application expires.

(4) Obtaining or attempting to obtain a firm registration by fraud or false misrepresentation is grounds for an administrative sanction and/or penalty.

(5) Applications are not reviewed until the application and fee have been received in the TBPG office. Applicants are initially notified of any deficiencies in the application.

(6) Applicants should respond to a deficiency notice within forty-five (45) days from the date of notification for applicants to correct deficiencies. If an applicant does not respond to a deficiency notice or does not ensure that necessary documents are provided to the TBPG office, the application will expire as scheduled one year after the date it became active.

(f) The initial certificate of registration shall be valid for a period of one year from the date it is issued, plus any days remaining through the end of that month. A renewed firm registration is valid for a period of one year from the expiration date of the firm registration being renewed.

(g) A Geoscience Firm's completed and approved registration is the legal authority granted the holder to actively offer or practice professional geoscience upon meeting the requirements as set out in the Act and TBPG Rules. When a firm registration is issued, a firm registration wall certificate, the first firm registration certificate expiration card, and the first portable firm registration card is provided to the new Geoscience Firm. The firm registration wall certificate shall bear the name of the firm, the firm's unique Geoscience Firm registration number, and the date the firm registration was originally issued. The firm registration wall certificate is not valid proof of current registration as a firm, unless it is accompanied by the firm registration certificate expiration card and the date on the firm registration certificate card is not expired. The firm registration certificate expiration card shall bear the name of the firm, the firm's unique firm registration license number, and the date the firm registration will expire, unless it is renewed. The portable firm registration card shall bear the name of the firm, the firm's unique Geoscience Firm registration number, and the date the registration will expire, unless it is renewed.

(h) At least sixty (60) days in advance of the date of the expiration, the Board staff shall notify each registered firm of the date of the expiration and the amount of the fee that shall be required for its annual renewal. The registration may be renewed by completing the renewal application and paying the annual registration renewal fee set by the Appointed Board. It is the sole responsibility of the firm to pay the required renewal fee prior to the expiration date, regardless of whether the renewal notice is received.

(i) A certificate of registration which has been expired for less than one (1) year may be renewed by completing a Firm Registration Renewal Application (Form D), along with an affirmation signed by the Authorized Official of a Firm indicating whether professional geoscience services were offered, pending, or performed for the public in Texas when the firm's registration was expired, and payment of a $50 late renewal penalty. If a firm under application for late firm registration renewal has met the requirements for renewal and has indicated that the geoscience services were offered, pending, or performed for the public in Texas while the firm's registration was expired, unless certain allegations of misconduct are present, the firm's registration shall be renewed. Information regarding unregistered geoscience practice received under this section shall be referred to the enforcement division for appropriate action that could include the initiation of a complaint by the Board staff. A firm registration that has been expired for more than one year is permanently expired and may not be renewed; a new application is required.

§851.32. Continuing Education Program.

(a) Each licensee shall meet the Continuing Education Program (CEP) requirements for professional development as a condition for license renewal.

(b) Terms used in this section are defined as follows:

(1) Professional Development Hour (PDH)--A contact hour (clock hour) of CEP activity. PDH is the basic unit for CEP reporting.

(2) Continuing Education Unit (CEU)--Unit of credit customarily used for continuing education courses. One continuing education unit equals 10 hours of class in an approved continuing education course.

(3) College/Unit Semester/Quarter Hour--Credit for course in a discipline of geoscience or other related technical elective of the discipline.

(4) Course/Activity--Any qualifying course or activity with a clear purpose and objective which will maintain, improve, or expand the skills and knowledge relevant to the licensee's field of practice.

(c) Every P.G. licensee is required to obtain 15 continuing education hours (PDH units) during a standard renewal period year (one year). The continuing education requirement for a license that is renewed for a period less than one year per §851.28(b) of this chapter shall be prorated.

(d) A minimum of 1 PDH per renewal period must be in the area of professional ethics, roles and responsibilities of Professional Geoscientists, or review on-line of the Texas Geoscientist Practice Act and TBPG rules.

(e) If a licensee exceeds the annual requirement in any renewal period, a maximum of 30 PDH units may be carried forward into the subsequent renewal periods.

(f) PDH units may be earned as follows:

(1) Successful completion or auditing of college credit courses.

(2) Successful completion of continuing education courses, either offered by a professional or trade organization, university or college, or offered in-house by a corporation, other business entity, professional or technical societies, associations, agencies, or organizations, or other group.

(3) Successful completion of correspondence, on-line, televised, videotaped, and other short courses/tutorials.

(4) Presenting or attending qualifying seminars, in-house courses, workshops, or professional or technical presentations made at meetings, conventions, or conferences sponsored by a corporation, other business entity, professional or technical societies, associations, agencies, or organizations, or other group.

(5) Teaching or instructing as listed in paragraphs (1) - (4) of this subsection.

(6) Authoring published papers, articles, books, or accepted licensing examination items.

(7) Active participation in professional or technical societies, associations, agencies, or organizations, including:

(A) Serving as an elected or appointed official;

(B) Serving on a committee of the organization; or

(C) Serving in other official positions.

(8) Patents issued.

(9) Engaging in self-directed course work.

(10) Software programs published.

(g) All activities described in subsection (f) of this section shall be relevant to the practice of a discipline of geoscience and may include technical, ethical, or managerial content.

(h) The conversion of other units of credit to PDH units is as follows and subject to subsection (g) of this section:

(1) 1 College or unit semester hour--15 PDH.

(2) 1 College or unit quarter hour--10 PDH.

(3) 1 Continuing Education Unit (CEU)--10 PDH.

(4) 1 Hour of professional development in course work, seminars, or professional or technical presentations made at meetings, conventions, or conferences--1 PDH.

(5) 1 Hour of professional development through self-directed course study (Not to exceed 5 PDH)--1 PDH.

(6) Each published paper or article--10 PDH and book--45 PDH.

(7) Active participation, as defined in subsection (f)(7) of this section, in professional or technical society, association, agency, or organization (Not to exceed 5 PDH per year)--1 PDH.

(8) Each patent issued--15 PDH.

(9) Each software program published--15 PDH.

(10) Teaching or instructing as described in subsection (f)(5) of this section--3 times the PDH credit earned.

(i) Determination of Credit:

(1) The Appointed Board shall be the final authority with respect to whether a course or activity meets the requirements of this chapter.

(2) The Board staff shall not pre-approve or endorse any CEP activities. It is the responsibility of each licensee to use his/her best professional judgment by reading and utilizing the rules and regulations to determine whether all PDH credits claimed and activities being considered meet the continuing education requirement. However, a course provider may contact the Board staff for an opinion for whether or not a course or technical presentation would meet the CEP requirements.

(3) Credit for college or community college approved courses will be based upon course credit established by the college.

(4) Credit for qualifying seminars and workshops will be based on one PDH unit for each hour of attendance. Attendance at qualifying programs presented at professional and/or technical society meetings will earn PDH units for the actual time of each program.

(5) Credit for self-directed course work will be based on one PDH unit for each hour of study and is not to exceed 5 PDH per renewal period. Credit determination for self-directed course work is the responsibility of the licensee.

(6) Credit determination for activities described in subsection (h)(6) of this section is the responsibility of the licensee.

(7) Credit for activity described in subsection (h)(7) of this section requires that a licensee serve as an officer of the organization, actively participate in a committee of the organization, or perform other activities such as making or attending a presentation at a meeting or writing a paper presented at a meeting. PDH credits are not earned until the end of each year of service is completed.

(8) Teaching credit, as defined in subsection (f)(5) of this section, is valid for teaching a course or seminar for the first time only.

(j) The licensee is responsible for maintaining records to be used to support credits claimed. Records required include, but are not limited to:

(1) A log, showing the type of activity claimed, sponsoring organization, location, duration, instructor's or speaker's name, and PDH credits earned; and

(2) Attendance verification records in the form of completion certificates, receipts, attendance roster, or other documents supporting evidence of attendance.

(k) The licensee must submit CEP certification on the log and a list of each activity, date, and hours claimed that satisfy the CEP requirement for that renewal year when audited. A percentage of the licenses will be randomly audited each year.
Figure: 22 TAC §851.32(k) (No change.)

(l) CEP records for each licensee must be maintained for a period of three years by the licensee.

(m) CEP records for each licensee are subject to audit by the Board staff.

(1) Copies must be furnished, if requested, to the Board staff for audit verification purposes.

(2) If upon auditing a licensee, the Board staff finds that the activities cited do not fall within the bounds of educational, technical, ethical, or professional management activities related to the practice of geoscience, the Board staff may require the licensee to acquire additional PDH as needed to fulfill the minimum CEP requirements.

(n) A licensee may be exempt from the professional development educational requirements for a specific renewal period or periods for one of the following reasons listed in paragraphs (1) - (4) of this subsection:

(1) New licensees that were licensed by passage of any part of the required licensing examinations shall be exempt for their first renewal period.

(2) A licensee serving on active duty and deployed outside the United States, its possessions and territories, in or for the military service of the United States for a period of time exceeding one hundred twenty (120) consecutive days in a year shall be exempt from obtaining the professional development hours required during that year.

(3) A licensee employed outside the United States, its possessions and territories, actively engaged in the practice of geoscience for a period of time exceeding three hundred (300) consecutive days in a year shall be exempt from obtaining the professional development hours required during that year except for five (5) hours of self-directed course work.

(4) A licensee who is impacted by a long term physical disability or illness (of the licensee or a family member or other person) may be exempt.

(5) Supporting documentation must be furnished to the TBPG. The Executive Director shall review circumstances and documentation and make a decision. A licensee may appeal a decision of the Executive Director to an appropriate Committee or the full Appointed Board, as appropriate.

(o) A licensee may bring an expired license to active status by obtaining all delinquent PDH units. However, if the total number required to become current exceeds 30 units, including 2 hours of professional ethics, roles and responsibilities of Professional Geoscientists, then 30 units (including 2 hours of ethics) shall be the maximum number required.

(p) Noncompliance:

(1) If a licensee does not certify that CEP requirements have been met for a renewal period, the license shall be considered expired and subject to late fees and penalties.

(2) A determination by audit that CEP requirements have been falsely reported shall be considered to be misconduct and will subject the licensee to disciplinary action.

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
Texas Board of Professional Geoscientists
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SUBCHAPTER C. CODE OF PROFESSIONAL CONDUCT

22 TAC §§851.101, 851.102, 851.104 - 851.108, 851.112

The adopted amendments are authorized by Texas Occupations Code §1002.151 which provides that the Board shall adopt and enforce rules consistent with the Texas Geoscience Practice Act (the Act); by Texas Occupations Code §1002.153 which authorizes the Board to adopt a code of professional conduct that is binding on all license holders; and by Texas Occupations Code §1002.154 which provides that the Board shall enforce the Act

The adopted amendments implement the Texas Occupations Code §§1002.151, 1002.153, 1002.154, 1002.251, 1002.256, and §§55.001 - 55.009, as amended through the 2015 Texas Legislative Session.

§851.101. General.

(a) This subchapter is promulgated pursuant to the Act, Texas Occupations Code (TOC), §1002.153, which directs the Appointed Board to adopt a code of professional conduct that is binding on all license holders under the Act and provides that the Appointed Board may enforce the code by imposing sanctions, as provided by the Act or this chapter. Except as otherwise noted, this subchapter applies only to situations which are related to the practice of professional geoscience.

(b) Any person who holds a Professional Geoscientist license, is the Authorized Official of a Firm (AOF), is a Geoscience Firm, or who holds a certificate as a Geoscientist-in-Training (GIT) is responsible for understanding and complying with the Act, rules adopted by the Appointed Board, and any other law or rule pertaining to the practice of professional geoscience. Any person under application for, currently holding, or eligible to renew a license, registration, or certification issued by the Texas Board of Professional Geoscientists (TBPG) is bound by the provisions of the Act and this chapter. The TBPG maintains jurisdiction over a license, registration, or certification it issues as long as the license, registration, or certification is current or renewable.

(c) A Professional Geoscientist, an AOF, or a person who holds a certificate as a Geoscientist-in-Training having knowledge of any alleged violation of the Act and/or TBPG rules shall cooperate with the TBPG in furnishing such information as may be required.

(d) A Professional Geoscientist, an AOF, or a person who holds a certificate as a Geoscientist-in-Training shall answer all inquiries concerning matters under the jurisdiction of the TBPG and shall fully comply with final decisions and orders of the Appointed Board. Failure to comply with these matters shall constitute a separate offense of misconduct subject to the penalties provided under the Act or this Chapter.

(e) The Appointed Board may take disciplinary actions as provided in §1002.403 of the Act for reasons stated in §1002.402 of the Act.

(f) This subchapter is not intended to suggest or define standards of care in civil actions against Professional Geoscientists, Geoscientists-in-Training, or Geoscience Firms involving their professional conduct.

(g) A Professional Geoscientist, a Geoscientist-in-Training, or a Geoscience Firm may donate professional geoscience services to charitable causes but must adhere to all provisions of the Act and the rules of the TBPG in the provision of all geoscience services rendered, regardless of whether the Professional Geoscientist, a Geoscientist-in-Training, or Geoscience Firm is paid for the geoscience services.

(h) A Professional Geoscientist or a Geoscientist-in-Training who is presenting geoscientific testimony, including geoscientific interpretation, analysis, or conclusions, or recommending geoscientific work before any public body or court of law, whether under sworn oath or not, must adhere to all provisions of the Act and the rules of the TBPG in the provision of all professional geoscience services rendered, regardless of whether the Professional Geoscientist is paid for the service or is providing such service on behalf of themselves or some other organization for which their services are provided at no cost.

§851.102. Competence/Negligence.

(a) A Professional Geoscientist or a Geoscience Firm shall undertake to perform a professional service only when the Professional Geoscientist or Geoscience Firm, together with those whom the Professional Geoscientist or Geoscience Firm shall engage as consultants, are qualified by education and/or experience in the specific technical areas involved. During delivery of a professional service, a Professional Geoscientist or Geoscience Firm shall act with reasonable care and competence and shall apply the technical knowledge and skill, which is ordinarily applied by reasonably prudent Professional Geoscientists practicing under similar circumstances and conditions.

(b) A Professional Geoscientist shall not affix his/her signature or seal to any document dealing with subject matter in which he/she

is not qualified by education and/or experience to form a reasonable judgment.

(c) A Professional Geoscientist or a Geoscience Firm shall not engage in conduct or perform professional geoscience services characterized by Gross Incompetence. Conduct or professional geoscience services characterized by Gross Incompetence includes work that evidenced an inability or lack of skill or knowledge necessary to discharge the duty and responsibility required of a Professional Geoscientist or Geoscience Firm, or evidenced by an extreme lack of knowledge of, or an inability or unwillingness to apply the principles or skills generally expected of, a reasonably prudent Professional Geoscientist or Geoscience Firm.

(d) A Professional Geoscientist who has been adjudicated mentally incompetent by a court may not renew a license or engage in activities requiring a license under the Act.

§851.105. Conflicts of Interest.

(a) If a Professional Geoscientist, a Geoscientist-in-Training, or Geoscience Firm has any business association or financial interest which might reasonably appear to influence the judgment of the Professional Geoscientist, Geoscientist-in-Training, or Geoscience Firm in connection with the performance of a professional geoscience service, and thereby jeopardize an interest of a client or employer of the Professional Geoscientist, the Geoscientist-in-Training, or Geoscience Firm, the Professional Geoscientist, Geoscientist-in-Training, or Geoscience Firm shall promptly inform the client or employer in writing of the circumstances of the business association or financial interest. Unless the client or employer provides written consent after full disclosure regarding the circumstances of the business association or financial interest, the Professional Geoscientist, Geoscientist-in-Training, or Geoscience Firm shall either terminate the business association or financial interest or forego the project or employment.

(b) A Professional Geoscientist, Geoscientist-in-Training, or Geoscience Firm shall not solicit or accept, directly or indirectly, any financial or other valuable consideration, material favor, or other benefit of any substantial nature, financial or otherwise, from more than one party in connection with a single project or assignment unless the circumstances are fully disclosed in writing to all parties.

(c) A Professional Geoscientist, Geoscientist-in-Training, or Geoscience Firm shall not solicit or accept, directly or indirectly, any financial or other valuable consideration, material favor, or other benefit of any substantial nature from any supplier of materials or equipment or from any contractor or any consultant in connection with any project on which the Professional Geoscientist, Geoscientist-in-Training, or Geoscience Firm is performing or has contracted to perform geoscience services.

§851.107. Prevention of Unauthorized Practice.

(a) A Professional Geoscientist, a Geoscientist-in-Training, or Geoscience Firm shall not practice or offer to practice geoscience in any governmental jurisdiction in which to do so would be in violation of a law regulating the practice of geoscience in that jurisdiction.

(b) A Professional Geoscientist who fails to renew his/her license prior to its annual expiration date shall not use the title, "Professional Geoscientist" or the initials, "P.G." and shall not offer to or engage in the public practice of professional geoscience or otherwise engage in activities that require a license until after the Professional Geoscientist's license has been properly renewed.

(c) A Geoscience Firm that fails to renew its Geoscience Firm registration prior to its annual expiration date shall not use the title, "Geoscience Firm" and shall not offer to or engage in the public practice of geoscience as defined by the Texas Occupations Code §1002.002 until after the Geoscience Firm's registration has been properly renewed.

(d) A Geoscientist-in-Training who fails to renew his/her certification prior to its annual expiration date shall not use the title, "Geoscientist-in-Training" until after the Geoscientist-in-Training's certification has been properly renewed.

§851.108. Criminal Convictions.

(a) The Texas Board of Professional Geologists (TBPG) will adhere to the provisions of Texas Occupation Code (TOC) Chapter 53 regarding the review of criminal convictions and certain deferred adjudications in regard to actions taken against an Applicant for a license or a license holder as a consequence of criminal conviction or certain deferred adjudications, as specified in TOC Chapter 53.

(b) Crimes directly related to the duties and responsibilities of a Professional Geoscientist include any crime that reflects a lack of fitness for professional licensure or a disregard of the standards commonly upheld for the practice of professional geoscience, such as the following:

(1) Criminal negligence;

(2) Soliciting, offering, giving, or receiving any form of bribe;

(3) The unauthorized use of property, funds, or proprietary information belonging to a client or employer;

(4) Acts relating to the malicious acquisition, use, or dissemination of confidential information related to geoscience; and

(5) Any intentional violation as an individual or as a consenting person of any provision of the Act.

(c) Any license holder whose license has been revoked under the provisions of TOC 53 due to incarceration may apply for a new license upon release from incarceration.

§851.112. Required Reports to the TBPG.

(a) A Professional Geoscientist, Geoscientist-in-Training, or a Geoscience Firm shall make written reports to the TBPG office within thirty (30) days of the following, as applicable:

(1) Any changes in a firm's name, the Authorized Official of the Firm (AOF), the firm's owners, officers, or directors, Professional Geoscientist(s) employed by the firm, Professional Geoscientist(s) who serve as the P.G. in Responsible Charge for the firm or any branch offices, communication phone number(s) of the Authorized Official of the Firm or P.G.s, and any other changes as identified in §851.152 of this chapter;

(2) Any changes in an individual P.G.'s or Geologist in Training's (GIT's) mailing address or other contact information and any changes in employment status with a firm (e.g. leaving or starting employment with a current firm, any new additional place(s) of employment, etc.);

(3) The initiation of practice as any other type of firm, corporation, partnership (whether or not the partnership is an incorporated entity), or other business entity that requires registration by the TBPG to engage in the public practice of geoscience;

(4) The notification in paragraphs (1) - (3) of this subsection shall include full legal trade or business name of the association or employment, physical location and mailing address of the business, status of business (corporation, assumed name, partnership, or self-employment through use of own name), legal relationship and position of responsibility within the business, telephone number of the business

office, effective date of this change, and reason for this notification (changed employment or retired, firm went out of business or changed its name or location, etc.) and information regarding areas of practice within each employment or independent sole practitioner practice setting;

(5) A change of business phone number, an additional business phone number, or a change in the home phone number;

(6) A criminal conviction, other than a Class C misdemeanor traffic offense, of the licensee or Geoscientist-in-Training;

(7) The settlement of or judgment rendered in a civil lawsuit filed against the licensee or Geoscience Firm relating to the Professional Geoscientist's or Geoscience Firm's professional geoscience services; or

(8) Final disciplinary or enforcement actions against the Professional Geoscientist, Geoscientist-in-Training, or Geoscience Firm taken by a licensing or certification body related to the practice of professional geoscience when known by the licensee.

(b) The information received under subsection (a) of this section may be used by the TBPG to determine whether a possible violation may have occurred.

(c) Failure to make a report as required by subsection (a) of this section is grounds for disciplinary action by the Appointed Board.

(d) A Geoscience Firm shall notify the TBPG in writing no later than thirty (30) days after a change in the business entity's:

(1) Physical or mailing address, electronic mail address, telephone or facsimile number, or other contact information;

(2) Officers or directors if they are the only Professional Geoscientists of the firm;

(3) Employment status of the Professional Geoscientists of the firm;

(4) Operation including dissolution of the firm or that the firm no longer offers to provide or is not providing professional geoscience services to the public in Texas; or

(5) Operation including addition or dissolution of branch and/or subsidiary offices.

(e) Notice as provided in subsection (d) of this section shall include, as applicable, the:

(1) Full legal trade or business name entity;

(2) The firm registration number;

(3) Telephone number of the business office;

(4) Name and license number of the license holder employed by or leaving the entity;

(5) Description of the change; and

(6) Effective date of this change.

(f) A Geoscience Firm that obtains a new certificate of authority from the Office of the Secretary of State or files a new Assumed Name Certificate with the County Clerk or the Office of the Secretary of State must provide the new instrument number to the TBPG within thirty (30) days of the action.

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 24, 2016.

TRD-201600896
Charles Horton
Executive Director
Texas Board of Professional Geoscientists
Effective date: March 15, 2016
Proposal publication date: November 27, 2015
For further information, please call: (512) 936-4405

SUBCHAPTER D. COMPLIANCE AND ENFORCEMENT

22 TAC §§851.152, 851.153, 851.156, 851.157

The adopted amendments are authorized by Texas Occupations Code §1002.151 which provides that the Board shall adopt and enforce rules consistent with the Texas Geoscience Practice Act (the Act); by Texas Occupations Code §1002.153 which authorizes the Board to adopt a code of professional conduct that is binding on all license holders; by Texas Occupations Code §1002.154 which provides that the Board shall enforce the Act; and by Texas Occupations Code §1002.351 which authorizes the Board to adopt rules relating to the public practice of geoscience by a firm or corporation.

The adopted amendments implement the Texas Occupations Code §§1002.151, 1002.153, 1002.154, and 1002.351.

§851.152. Firm Compliance.

(a) Unless registered with the TBPG or exempt from firm registration requirements under TOC §1002.351, an individual, firm, or corporation may not represent to the public that the individual, firm, or corporation is a licensed geoscientist or able to perform geoscience services or prepare a geoscientific report, document, or other record that requires the seal of a Professional Geoscientist.

(b) A business entity or sole proprietor that offers or is engaged in the non-exempt public practice of professional geoscience in Texas must register with the TBPG pursuant to the requirements of §851.30 of this chapter.

(c) The Appointed Board may revoke a certificate of registration that was obtained in violation of the Act and/or TBPG rules including, but not limited to, fraudulent or misleading information submitted in the application.

(d) A business entity or sole proprietor that is not registered with the TBPG may not represent to the public by way of letters, signs, or symbols as a part of any sign, directory, listing, contract, document, pamphlet, stationery, advertisement, signature, or business name that it is engaged in the non-exempt public practice of geoscience by using the terms:

(1) "Professional Geoscientist;"

(2) "licensed geoscientist;"

(3) "registered geoscientist;"

(4) "licensed Professional Geoscientist;"

(5) "registered Professional Geoscientist;" or

(6) any abbreviation or variation of those terms listed in paragraphs (1) - (5) of this subsection, or directly or indirectly use or cause to be used any of those terms in combination with other words.

(e) The Appointed Board may revoke or suspend a Geoscience Firm's registration, place on probation a firm whose registration has been suspended, reprimand a Geoscience Firm, or assess an administrative penalty against a Geoscience Firm for a violation of any provision of TBPG rules or the Act by the firm or any employee of the firm. The Appointed Board also may take action against an Applicant pursuant to §851.110 of this chapter.

§851.156. Professional Geoscientist Seals and Geoscience Firm Identification.

(a) The purpose of the Professional Geoscientist's seal is to show that professional geoscience services were performed by a qualified licensed Professional Geoscientist and to identify the Professional Geoscientist who performed the geoscience services.

(b) The Professional Geoscientist shall utilize titles set forth in the Texas Geoscience Practice Act (Act), §1002.251. Physical seals of two different sizes will be acceptable: a pocket seal (the size commercially designated as 1-5/8-inch seal) or desk seal (commercially designated as a two-inch seal) to be of the design shown in this subsection. Computer-applied seals may be of a reduced size provided that the Professional Geoscientist's name and number are clearly legible.
Figure: 22 TAC §851.156(b) (No change.)

(c) A Professional Geoscientist shall only seal documents that contain geoscience services performed by or under his/her direct supervision. Upon sealing, the Professional Geoscientist takes full professional responsibility for geoscience services that are provided through the sealed document.

(d) It shall be misconduct to knowingly sign or seal any geoscience document if its use or implementation may endanger the health, safety, or welfare of the public.

(e) It shall be unlawful for a license holder whose license has been revoked, suspended, or has expired to sign or affix a seal on any document.

(f) All seals utilized by a license holder shall be capable of leaving a permanent ink or impression on the document.

(g) Electronically conveyed geoscience documents requiring a seal must contain an electronic seal and electronic signature. Such seals should conform to the design requirements set forth in this section.

(1) A Professional Geoscientist must employ reasonable security measures to make the document unalterable. The Professional Geoscientist shall maintain the security of his/her electronic seal and electronic signature. The following methods are allowed:

(A) The Professional Geoscientist may electronically copy the original hard copy of the document that bears his/her seal, original signature, and date and transmit this document in a secure electronic format.

(B) The Professional Geoscientist may create an electronic seal and electronic signature for use in transmitting geoscientific documents by making a secure electronic graphic of his/her original seal and signature.

(2) The use of an electronically-generated signature is not allowed by changing the word processing font from a "normal text" to a signature/handwriting font.

(A) Shown below is a sample of an unauthorized electronically-generated signature using the Lucida Handwriting FONT.
Figure: 22 TAC §851.156(g)(2)(A) (No change.)

(B) Shown below is a sample of a digital image of a geoscientist's seal and original signature saved as a digital image (JPEG Format, for example).
Figure: 22 TAC §851.156(g)(2)(B) (No change.)

(h) Preprinting of blank forms with a Professional Geoscientist's seal is prohibited.

(i) Signature reproductions, including but not limited to, rubber stamps, decals or other replicas, and electronically-generated signatures shall not be used in lieu of the Professional Geoscientist's actual signature or a true digital graphic copy of the actual signature.

(j) A Professional Geoscientist shall take reasonable steps to insure the security of his/her physical or electronically-generated seals at all times. In the event of loss of a seal, the Professional Geoscientist will immediately give written notification of the facts concerning the loss to the Executive Director.

(k) Professional Geoscientists shall affix an unobscured seal, original signature, and date of signature to the originals of all documents containing the final version of any geoscience document as outlined in subsection (l) of this section before such document is released from their control. Preliminary documents released from their control shall identify the purpose of the document, the Professional Geoscientist(s) of record and the Professional Geoscientist license number(s), and the release date by placing the following text or similar wording instead of a seal: "This document is released for the purpose of (Examples: interim review, mark-up, drafting) under the authority of (Example: Leslie H. Doe, P.G. 0112) on (date). It is not to be used for (Examples: construction, bidding, permit) purposes."

(l) The Professional Geoscientist shall sign, seal, and date the original title sheet or a signature page of geoscience documents, specifications, details, calculations, or estimates, and each sheet of maps, drawings, cross sections, or other figures representing geoscientific services carried out under the supervision of the geoscientist, regardless of size or binding. All unbound geoscience documents, including but not limited to, research reports, opinions, recommendations, evaluations, addenda, and geoscience software shall bear the Professional Geoscientist's printed name, date, signature, and the designation "P.G." or other terms allowed under §1002.251 of the Act, unless the geoscience service is exempt under §1002.252 of the Texas Occupations Code. Electronic correspondence of this type shall include an electronic signature as described in subsection (f) of this section or be followed by a hard copy containing the Professional Geoscientist's printed name, date, signature, and the designation "P.G." or other terms allowed under §1002.251 of the Act.

(m) Geoscience services performed by more than one Professional Geoscientist shall be sealed in a manner such that all geoscience can be clearly attributed to the responsible Professional Geoscientist or Professional Geoscientists. When sealing plans or documents on which two or more Professional Geoscientists have worked, the seal of each Professional Geoscientist shall be placed on the plan or document with a notation describing the geoscience services done under each Professional Geoscientist's responsible charge.

(n) Licensed employees of the state, its political subdivisions, or other public entities are responsible for sealing their original geoscience documents; however, such licensed employees engaged in review and evaluation for compliance with applicable law or regulation of documents containing geoscience services submitted by others, or in the preparation of general planning documents, a proposal for decision in a contested case or any similar position statement resulting from a compliance review, need not seal the review reports, planning documents, proposals for decision, or position statements.

(o) When a Professional Geoscientist elects to use standards or general guideline specifications, those items shall be clearly labeled as such, shall bear the identity of the publishing entity, and shall be:

(1) Individually sealed by the Professional Geoscientist; or

(2) Specified on an integral design/title/contents sheet that bears the Professional Geoscientist's seal, signature, and date with a statement authorizing its use.

(p) Alteration of a sealed document without proper notification to the responsible Professional Geoscientist is misconduct or an offense under the Act.

(q) A license holder is not required to use a seal for a document for which the license holder is not required to hold a license under Texas Occupations Code, Chapter 1002.

(r) All geoscience documents released, issued, or submitted by a licensee shall clearly indicate the Geoscience Firm name and registration number by which the Professional Geoscientist is employed. If the Professional Geoscientist is employed by a local, State, or Federal Government agency or a firm that is exempt from the requirement of registration under Texas Occupations Code, Chapter 1002, Subchapter H, then only the name of the agency or firm shall be required.

(s) TBPG also considers a document to meet the sealing requirement if a reader or user of the document can determine that the original document is complete and unaltered from that which was placed under seal.

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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Charles Horton
Executive Director
Texas Board of Professional Geoscientists
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For further information, please call: (512) 936-4405

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TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 132. DEATH BENEFITS--DEATH AND BURIAL BENEFITS

28 TAC §132.7, §132.13

The Texas Department of Insurance, Division of Workers' Compensation (division) adopts amendments to 28 TAC §132.7, concerning duration of death benefits for eligible spouse, and §132.13, concerning burial benefits. An informal working draft of the rule text was published on the division's website on August 12, 2015, and the division received six comments. The proposal was published in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8729) and the division received no comments. Amended §132.7 and §132.13 are adopted without changes to the proposed text. There was not a request for public hearing submitted to the division.

In accordance with Government Code §2001.033, the division's reasoned justification for the sections is set out in this order, which includes the preamble. The following paragraphs include a detailed section-by section description and reasoned justification for all amendments to §132.7 and §132.13.

The Texas Department of Insurance, Division of Workers' Compensation (division) adopts amendments to §132.7, concerning duration of death benefits for eligible spouse, and §132.13, concerning burial benefits. The purpose of amended §132.7 is to align existing §132.7 with House Bill (HB) 1094, 84th Legislature, Regular Session (2015). HB 1094 amended Labor Code §408.183 to allow eligible spouses of first responders to remarry and remain eligible for death benefits, if the first responder suffered death in the course and scope of employment or while providing services as a volunteer. The purpose of amended §132.13 is to align existing §132.13 with Senate Bill (SB) 653, 84th Legislature, Regular Session (2015). SB 653 amended Labor Code §408.186 to increase the maximum amount of reimbursement for burial benefits payable in the workers' compensation system from $6,000 to $10,000 for a compensable injury that occurs on or after September 1, 2015.

The division also adopts non-substantive changes to amended §132.7 and §132.13 including adding the word "insurance" before the word "carrier" in §132.7(a) and (c) - (e), replacing "commission" with "division" in §132.7(c) and (e) and §132.13(d), replacing "rule" with "section" in §132.7(a) and (e), and replacing "common law" with "informal" in §132.7(b).

Section 132.7 addresses Duration of Death Benefits for Eligible Spouse. Amended §132.7(a) adds the word "insurance" before the word "carrier" and replaces "rule" with "section" to conform to current agency style. Amended §132.7(a) also exempts subsection (f) from the requirements in §132.7(a). The purpose of amended §132.7(a) is to align existing §132.7 with HB 1094, which amended Labor Code §408.183 to allow eligible spouses of first responders to remarry and remain eligible for death benefits.

Amended §132.7(b) replaces "common law" with "informal" to align with Family Code §2.401. The division clarifies that the alignment with Family Code §2.401 will not change any requirements in existing §132.7. HB 53, 61st Legislature, Regular Session (1969) codified common law marriage into statute as informal marriage. The purpose of the non-substantive amendment is solely to conform §132.7(b) with current statutory language.

Amended §132.7(c) replaces "commission" with "division" and adds the word "insurance" before the word "carrier" to conform to current agency style.

Amended §132.7(d) adds the word "insurance" before the word "carrier" to conform to current agency style.

Amended §132.7(e) replaces "commission" with "division," adds the word "insurance" before the word "carrier," and replaces "rule" with "section" to conform to current agency style. Amended §132.7(e) deletes the reference to Texas Workers' Compensation Act §10.04 because HB 752, 73rd Legislature, Regular Session (1993) repealed Vernon's Texas Civil Statutes Article 8308 §10.04, and readopted the statutes as the Labor Code.

New §132.7(f) states that an eligible spouse who remarries is eligible for death benefits for life if the employee was a first responder, as defined by Labor Code §504.055, who suffered death in the course and scope of employment or while providing ser-

vices as a volunteer. Amended §132.7(b) - (e) do not apply to an eligible spouse under new §132.7(f). New §132.7(f) applies to claims based on a compensable injury that occurs on or after September 1, 2015. The purpose of amended §132.7(f) is to align existing §132.7 with HB 1094. HB 1094 amended Labor Code §408.183 to allow eligible spouses of first responders to remarry and remain eligible for death benefits for life, if the first responder suffered death in the course and scope of employment or while providing services as a volunteer. HB 1094 applies to claims based on a compensable injury that occurs on or after September 1, 2015.

The division clarifies that new §132.7(f) does not alter the distribution of death benefits under §132.11 or the redistribution of death benefits under §132.12. If there is an eligible child or grandchild and an eligible spouse, death benefits continue to be divided between the beneficiaries, with half paid to the eligible spouse and half paid in equal shares to the eligible children. The division also clarifies that although new §132.7(f) does not affect the redistribution of death benefits under §132.12, an eligible spouse under new §132.7(f) will remain eligible for death benefits after remarriage and the spouse's share of benefits will not be redistributed.

Section 132.13 addresses Burial Benefits. Amended §132.13(b)(3) modifies the effective date for the $6,000 maximum reimbursement for burial benefits paid based on a compensable injury that occurs "on or after September 1, 1999" to "on or after September 1, 1999 and before September 1, 2015." The purpose of amended §132.13(b)(3) is to align existing §132.13 with SB 653. SB 653 amended Labor Code §408.186 to increase the maximum amount of reimbursement for burial benefits payable in the workers' compensation system from $6,000 to $10,000 for a compensable injury that occurs on or after September 1, 2015.

New §132.13(b)(4) increases the amount of maximum reimbursement for burial benefits payable in the workers' compensation system from $6,000 to $10,000 if the burial benefits are paid based on a compensable injury that occurs on or after September 1, 2015. The purpose of amended §132.13(b)(4) is to align existing §132.13 with SB 653, which amended Labor Code §408.186 to increase the maximum amount of reimbursement for burial benefits payable in the workers' compensation system from $6,000 to $10,000 for a compensable injury that occurs on or after September 1, 2015.

Amended §132.13(d) replaces "commission" with "division" to conform to current agency style.

The division did not receive any comments on the proposed amendments to §132.7 and §132.13.

The amendments are adopted under Labor Code §§408.183, 408.186, 408.181, 408.182, 408.184, 401.011(13), 401.011(29), 402.021(a)(1), 402.021(b)(5), 415.002(a)(11), 415.002(a)(12), 415.002(a)(13), 402.00111, and 402.061.

Labor Code §408.183 outlines the duration of death benefits for legal beneficiaries. Labor Code §408.186 outlines the requirements for burial benefits in the workers' compensation system. Labor Code §408.181 requires an insurance carrier to pay death benefits to a legal beneficiary if a compensable injury to the employee results in death. Labor Code §408.182 outlines the requirements for distribution of death benefits. Labor Code §408.184 outlines the requirements for redistribution of death benefits. Labor Code §401.011(13) defines death benefits. Labor Code §401.011(29) defines legal beneficiary. Labor Code §402.021(a)(1) states that one of the basic goals of the workers' compensation system is that each employee be treated with dignity and respect when injured on the job. Labor Code §402.021(b)(5) states that one of the goals of the workers' compensation system is to minimize the likelihood of disputes and resolve them promptly and fairly when identified. Labor Code §415.002(a)(11) states that an insurance carrier or its representative commits an administrative violation if they fail to process claims promptly in a reasonable and prudent manner. Labor Code §415.002(a)(12) states that an insurance carrier or its representative commits an administrative violation if they fail to initiate or reinstate benefits when due if a legitimate dispute does not exist as to the liability of the insurance carrier. Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code. Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary for the implementation and enforcement of the Texas Workers' Compensation Act.

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

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201600986
Marisa Lopez Wagley
Acting General Counsel
Texas Department of Insurance, Division of Workers' Compensation
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For further information, please call: (512) 804-4703

TITLE 34. PUBLIC FINANCE

PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

CHAPTER 61. TERMS AND PHRASES

34 TAC §61.1

The Employees Retirement System of Texas (ERS) adopts an amendment to 34 Texas Administrative Code (TAC) Chapter 61, concerning Terms and Phrases, by amending §61.1 concerning Definitions, without changes to the proposed text as published in the January 8, 2016, issue of the *Texas Register* (41 TexReg 432). The amendment was approved by the ERS Board of Trustees at its February 23, 2016 meeting. This section will not be republished.

Section 61.1 (Definitions) is amended to include a definition for an "interested person." The amendment clarifies who an interested person may be with regard to ERS rules.

No comments were received on the proposed rule amendment.

The amendment is adopted under §815.102, Texas Government Code, which provides authorization for the ERS Board of Trustees to adopt rules necessary for the administration of the funds of the retirement system and regarding the transaction of other business of the Board.

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 23, 2016.

TRD-201600874
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Effective date: March 14, 2016
Proposal publication date: January 8, 2016
For further information, please call: (877) 275-4377

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CHAPTER 63. BOARD OF TRUSTEES

34 TAC §§63.1, 63.3, 63.4

The Employees Retirement System of Texas (ERS) adopts amendments to 34 Texas Administrative Code (TAC) Chapter 63, concerning Board of Trustees, by amending §§63.1, 63.3 and 63.4, concerning Duties of the Board of Trustees, Election of Trustees (Nomination Process) and Election of Trustees (Ballot), without changes to the proposed text as published in the January 8, 2016, issue of the *Texas Register* (41 TexReg 433). The amendments were approved by the ERS Board of Trustees at its February 23, 2016 meeting. These sections will not be republished.

Section 63.1 (Duties of the Board of Trustees) is amended to clarify that the Board's appellate jurisdiction of appeals is provided in Chapter 67, Hearings on Disputed Claims.

Section 63.3 (Election of Trustees (Nomination Process)) is amended to clarify the maximum number of signatures ERS will accept on a petition. Candidates are still required to demonstrate sufficient support from state employees, but the amendment eliminates the cost of an extensive petition drive. The amendment also provides that a petition submitted on behalf of a candidate must include original signatures; petitions with reproduced, photocopied, scanned or faxed signatures will be disqualified. These changes also streamline the way in which ERS validates nominations, thereby reducing costs.

Section 63.4 (Election of Trustees (Ballot)) is amended to clarify that ERS will set the time and location for the drawing for the order of names to appear on the ballot, and the amendments also give examples of the types of information that ERS may request on the ballot. Section 63.4(j) is also ministerially amended to remove reference to a run-off election, since conducting a run-off election significantly increases the cost of the process, and is not a prudent use of trust resources given the fiduciary duties of the Board of Trustees.

No comments were received on the proposed rule amendments.

The amendments are adopted under §815.102, Texas Government Code, which provides authorization for the ERS Board of Trustees to adopt rules necessary for the administration of the funds of the retirement system and regarding the transaction of any other business of the Board.

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 23, 2016.

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Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
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Proposal publication date: January 8, 2016
For further information, please call: (877) 275-4377

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CHAPTER 65. EXECUTIVE DIRECTOR

34 TAC §§65.3, 65.11, 65.13

The Employees Retirement System of Texas (ERS) adopts amendments and the addition of new rules to 34 Texas Administrative Code (TAC) Chapter 65, concerning Executive Director, by amending §65.3, concerning Records of the System, and adding new rule §65.11, concerning Reimbursement for Training or Education, and new rule §65.13, concerning Enhanced Contract Monitoring, without changes to the proposed text as published in the January 8, 2016, issue of the *Texas Register* (41 TexReg 434). The amendments and new rules were approved by the ERS Board of Trustees at its February 23, 2016, meeting. These sections will not be republished.

Section 65.3 (Records of the System) is amended to remove subsection (c). Since ERS is required to follow the Office of the Attorney General's (OAG) rules regarding costs associated with producing information for PIA requests pursuant to §552.262, Texas Government Code, this section is no longer necessary.

ERS added §65.11 to comply with new §656.047(b), Texas Government Code, Acts of the 84th Legislature, Regular Session, 2015. The new law requires agencies to adopt rules requiring the agency's executive head to authorize tuition reimbursement payments for employees.

ERS added new rule §65.13 to comply with new §2261.253, Texas Government Code, Acts of the 84th Legislature, Regular Session, 2015. The new law requires state agencies to establish procedures to identify each contract that requires enhanced contract or performance monitoring, and to submit information on the contract to the Board.

No comments on the proposed amendments and new rules were received.

The amendments and new rules are adopted under the Texas Government Code, §815.102, which provides authorization for the ERS Board of Trustees to adopt rules for the administration of funds of the retirement system.

No other statutes are affected by the amendments and new rules.

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-201600876

Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Effective date: March 14, 2016
Proposal publication date: January 8, 2016
For further information, please call: (877) 275-4377

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CHAPTER 85. FLEXIBLE BENEFITS

34 TAC §§85.1, 85.4, 85.7, 85.9, 85.13

The Employees Retirement System of Texas (ERS) adopts amendments to 34 Texas Administrative Code (TAC) Chapter 85 concerning Flexible Benefits, §§85.1, 85.4, 85.7, 85.9 and 85.13, concerning Introduction and Definitions, Separate Plans, Enrollment, Payment of Claims from Reimbursement Accounts, and Funding, without changes to the proposed text as published in the January 8, 2016, issue of the *Texas Register* (41 TexReg 435). The amendments were approved by the ERS Board of Trustees at its February 23, 2016 meeting. These sections will not be republished.

ERS adopts amendments to §§85.1, 85.4, 85.7, 85.9, and 85.13 in order simplify plan administration and benefit TexFlex program participants in a manner permitted by the Internal Revenue Code. The amendments also implement the qualified transportation benefit as contemplated by statute, and provide for a plan document for such qualified transportation benefit.

Section 85.1 (Introduction and Definitions) is amended to clarify that the grace period still applies to an employee participating in a dependent care reimbursement account.

Section 85.1 (Introduction and Definitions) and §85.4 (Separate Plans) are amended to update the rules to offer TexFlex participants a qualified transportation benefit plan as permitted by §132 of the Internal Revenue Code. The Internal Revenue Code permits such a benefit, but not as part of a §125 cafeteria plan. These amendments permit the offering of a separate TexFlex qualified transportation benefit plan governed by a plan document executed by the executive director of ERS as authorized by the Board of Trustees.

Section 85.7 (Enrollment) is amended to provide that carryover amounts less than $25.00 shall be forfeited to pay the administrative costs of the plan. In order to maximize administrative and plan efficiency, only balances that are $25 or greater will be carried over.

Section 85.9 (Payment of Claims from Reimbursement Accounts) is amended to clarify that a health care reimbursement account participant who has insufficient funds to pay for the monthly election amount during the plan year will be liable to make after-tax contributions to pay the monthly election.

Section 85.13 (Funding) is amended to clarify that after a Qualifying Life Event (QLE), claims will be accounted for using a non-blended approach. The non-blended approach provides that when a participant has such a QLE, such as adding a dependent by birth, adoption or marriage, the participant may increase contributions, and only the amounts contributed after the QLE and contribution increase will be available for new claims during the remainder of the plan year. Any claims accrued before the QLE and contribution increase are reimbursed using funds provided by the participant's original election.

No comments on the proposed rule amendments.

The amendments are adopted under the Texas Insurance Code, §1551.052 and §1551.206, which provide authorization for the ERS Board of Trustees to develop, implement, and administer a cafeteria plan, and to adopt necessary rules.

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 23, 2016.

TRD-201600877
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Effective date: March 14, 2016
Proposal publication date: January 8, 2016
For further information, please call: (877) 275-4377

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 14. SCHOOL BUS SAFETY STANDARDS

SUBCHAPTER B. SCHOOL BUS DRIVER QUALIFICATIONS

37 TAC §14.12, §14.14

The Texas Department of Public Safety (the department) adopts amendments to §14.12 and §14.14, concerning School Bus Driver Qualifications. These sections are adopted without changes to the proposed text as published in the January 8, 2016, issue of the *Texas Register* (41 TexReg 441) and will not be republished.

The amendments update the rules to reflect the revised Medical Examination Report Form for Commercial Driver Medical Certification and School Bus Drivers' Driving Record Evaluation as the current publications. Additional nonsubstantive changes have been made to update the rules.

No comments were received regarding the adoption of these amendments.

These amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §521.022, which authorizes the department to adopt rules to administer and enforce the school bus driver qualifications.

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 24, 2016.

TRD-201600906

D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: March 15, 2016
Proposal publication date: January 8, 2016
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SUBCHAPTER D. SCHOOL BUS SAFETY STANDARDS

37 TAC §14.52

The Texas Department of Public Safety (the department) adopts amendments to §14.52, concerning Texas School Bus Specifications. This section is adopted without changes to the proposed text as published in the January 8, 2016, issue of the *Texas Register* (41 TexReg 443) and will not be republished.

The amendments update the rule to reflect the 2016 Texas School Bus Specifications as the current publication.

No comments were received regarding the adoption of these amendments.

These amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Education Code, §34.002, which authorizes the department to adopt safety standards for school buses; Texas Transportation Code, §547.102, which authorizes the department to adopt standards and specifications for school bus equipment; and §547.7015, which authorizes the department to adopt rules governing the design, color, lighting, and other equipment, construction, and operation of a school bus for the transportation of schoolchildren.

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 24, 2016.

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General Counsel
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Proposal publication date: January 8, 2016
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CHAPTER 15. DRIVER LICENSE RULES

SUBCHAPTER A. LICENSING REQUIREMENTS

37 TAC §15.7

The Texas Department of Public Safety (the department) adopts amendments to §15.7, concerning Occupational License (Essential Need). This section is adopted without changes to the proposed text as published in the January 8, 2016, issue of the *Texas Register* (41 TexReg 444) and will not be republished.

These amendments are intended to clarify that an occupational order from the court is now valid for a period of 45 days pursuant to Texas Transportation Code, §521.249. Further amendments are made to clarify which courts are allowed to issue an occupational court order and also change the language that indicates a customer submits an "application" to a customer submits a "request for an occupational extension" to extend the expiration of the occupational license. These changes also comply with Chapter 521, Subchapter L.

No comments were received regarding the adoption of these amendments.

These amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code, and Texas Transportation Code, §521.249, which changed the expiration of an occupational court order from 30 days to 45 days.

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. APPLICATION REQUIREMENTS--ORIGINAL, RENEWAL, DUPLICATE, IDENTIFICATION CERTIFICATES

37 TAC §15.42

The Texas Department of Public Safety (the department) adopts amendments to §15.42, concerning Social Security Number. This section is adopted with non-substantive changes to the proposed text as published in the January 8, 2016, issue of the *Texas Register* (41 TexReg 446). The text of the rule will be republished.

These amendments are intended to clarify that a Social Security number is now required for an identification certificate pursuant to Texas Transportation Code, §521.142.

No comments were received regarding the adoption of these amendments.

These amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code, and Texas Transportation Code, §521.142, which requires the applicant's Social Security number for an identification certificate.

§15.42. Social Security Number.

(a) The Social Security number (SSN) shall be obtained from all applicants who have been issued a number by the United States Social Security Administration. This number will be utilized by the department for the purpose of additional identification and may be disclosed only to those entities that have statutory authority to receive the SSN.

(b) When an SSN is originally obtained, it is mandatory that documentation be provided to verify the number. All documents presented for proof of SSN must be verifiable through the issuing entity and include a pre-printed SSN. Documentation may include:

(1) Federal issued Social Security card,

(2) Military identification (Applies to active, reserve and dependent status),

(3) Certificate of Release or Discharge of Active Duty (DD-214),

(4) Certified college/university transcript designating number as SSN,

(5) IRS form W-2 Wage and Tax Statement,

(6) IRS form 1099-MISC,

(7) Pay stub containing applicant's name and SSN, or

(8) Documents such as health insurance cards, Veteran's Administration cards, and pilot's licenses with identifiable SSN may be accepted.

(c) On all duplicate and renewal Texas driver license or identification certificate applications, the documented SSN shall be obtained where it is not currently a part of the applicant's record. After the SSN becomes a part of the applicant's record, all future duplicate and renewal transactions occurring in a driver license office will be verified verbally for the correct SSN. Should the SSN on record not match the number provided, the applicant will be required to provide acceptable documentation as listed in subsection (b) of this section.

(d) The department may verify the authenticity of the SSN on record through the Social Security Administration. In the event that the SSN on record cannot be authenticated, the department may deny issuance of the renewal, duplicate or original transaction until such time as authentication is made through the Social Security Administration. If the license or identification certificate was previously issued, the department may mail to the address on record a notice requiring the license or identification certificate holder to provide additional documentation. Failure to comply with this request within 30 days may result in the cancellation of the driver license or identification certificate.

(e) Applicants who state they have not applied for, have not been issued or do not have an SSN assigned by the Social Security Administration will be given the department's "Social Security" affidavit for completion. This sworn affidavit will contain:

(1) The applicant's full name, date of birth, and driver license or identification certificate number;

(2) A statement that the applicant has not applied for, been issued or assigned an SSN by the United States Social Security Administration;

(3) A statement of release for verification and investigative purposes;

(4) A notice that failure to provide required information to the department may result in the cancellation of the applicant's driver license or identification certificate per Texas Transportation Code, §521.314; and

(5) A notice that the applicant can be subject to other criminal penalties including Texas Transportation Code, §521.451 and §521.454.

The agency certifies that legal counsel has reviewed the 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 24, 2016.

TRD-201600909
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: March 15, 2016
Proposal publication date: January 8, 2016
For further information, please call: (512) 424-5848

SUBCHAPTER C. EXAMINATION REQUIREMENTS

37 TAC §15.55

The Texas Department of Public Safety (the department) adopts amendments to §15.55, concerning Waiver of Knowledge and/or Skills Exam. This section is adopted without changes to the proposed text as published in the January 8, 2016, issue of the *Texas Register* (41 TexReg 448) and will not be republished.

The amendments are intended to clarify conditions under which exam requirements will not be waived when a driver education certificate is presented that is dated more than two years prior to the date of application. In addition, the language has been revised and reorganized for clarity.

No comments were received regarding the adoption of these amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation 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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TRD-201600910
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General Counsel
Texas Department of Public Safety
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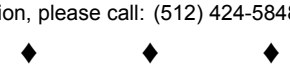

37 TAC §15.63

The Texas Department of Public Safety (the department) adopts new §15.63, concerning Out of State Examinations and Applications. This section is adopted without changes to the proposed text as published in the January 8, 2016, issue of the *Texas Register* (41 TexReg 449) and will not be republished.

This rule is intended to eliminate redundancies and clearly outline requirements concerning out of state examinations and applications. The creation of new §15.63 is filed simultaneously with the repeal of §15.93.

No comments were received regarding the adoption of this new rule.

The new rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code.

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

Filed with the Office of the Secretary of State on February 24, 2016.

TRD-201600911
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Texas Department of Public Safety
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Proposal publication date: January 8, 2016
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SUBCHAPTER E. RECIPROCITY IN DRIVER LICENSING

37 TAC §§15.91 - 15.93

The Texas Department of Public Safety (the department) adopts the repeal of §§15.91 - 15.93, concerning Reciprocity in Driver Licensing. This repeals are adopted without changes to the proposed text as published in the January 8, 2016, issue of the *Texas Register* (41 TexReg 450) and will not be republished.

The repeal of §15.91 and §15.92 is intended to eliminate redundant language found in Texas Transportation Code, §§521.001, 521.028, and 521.030 and delete outdated information. The repeal of §15.93 is filed simultaneously with the adoption of new §15.63. These adoptions move information regarding out of state examinations to 37 TAC Chapter 15, Subchapter C, eliminating redundancies and clearly outlining requirements concerning out of state examinations applications.

No comments were received regarding the adoption of this repeal.

The repeal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §§521.001, 521.028, and 521.030.

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-201600912
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Proposal publication date: January 8, 2016
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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 1. STATE AUTHORITY RESPONSIBILITIES

SUBCHAPTER A. ADVISORY COMMITTEES

40 TAC §§1.1 - 1.4, 1.8, 1.20, 1.21

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), the repeal of Subchapter A, Advisory Committees, consisting of §§1.1, 1.2, 1.3, 1.4, 1.8, 1.20, and 1.21, in Chapter 1, State Authority Responsibilities, without changes to the proposed text as published in the December 11, 2015, issue of the *Texas Register* (40 TexReg 8875).

The purpose of the repeal is, along with new Chapter 89, to implement §531.012 of the Texas Government Code, as amended by Senate Bill 200 of the 84th Legislature, Regular Session, 2015. Section 531.012 requires the executive commissioner of the Texas Health and Human Services Commission to establish and maintain advisory committees to solicit input from the public to address key issues of concern across the health and human services system. Section 531.012 also requires the executive commissioner to adopt rules to govern advisory committees in compliance with Texas Government Code, Chapter 2110, and to address topics specified in §531.012. The repeal deletes rules about an advisory committee that has been abolished.

DADS received no comments regarding adoption of the repeal.

The repeals are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code §531.012, which authorizes the executive commissioner to establish and maintain advisory committees.

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 29, 2016.

TRD-201600962
Lawrence Hornsby
General Counsel
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Effective date: March 20, 2016
Proposal publication date: December 11, 2015
For further information, please call: (512) 438-2430

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CHAPTER 2. LOCAL AUTHORITY RESPONSIBILITIES

SUBCHAPTER L. SERVICE COORDINATION FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY

40 TAC §§2.553 - 2.556, 2.560

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), amendments to §§2.553 - 2.556 and 2.560, in Subchapter L, Service Coordination for Individuals with an Intellectual Disability, in Chapter 2, Local Authority Responsibilities. Amendments to §§2.553 - 2.555 are adopted with changes to the proposed text as published in the November 27, 2015, issue of the *Texas Register* (40 TexReg 8457). Amendments to §2.556 and §2.560 are adopted without changes to the proposed text.

The adopted rules in Chapter 2, Subchapter L, address the implementation of Community First Choice (CFC), a Medicaid state plan option governed by the Code of Federal Regulations, Title 42 (42 CFR), Chapter 441, Subchapter K, regarding Home and Community-Based Attendant Services and Supports State Plan Option (Community First Choice). CFC services are available through managed care organizations (MCOs) contracting with HHSC. CFC is authorized by Texas Government Code §534.152 and is governed by rules of the Texas Health and Human Services Commission in Texas Administrative Code, Title 1, Chapter 354, Medicaid Health Services, Subchapter A, Purchased Health Services, Division 27, Community First Choice (CFC). The Centers for Medicare and Medicaid Services approved a state plan amendment to implement CFC effective June 1, 2015.

In accordance with Texas Government Code §534.152, the adopted rules expand the eligibility criteria for service coordination to include an individual enrolling in CFC services provided through an MCO and certain individuals receiving CFC services through an MCO. In addition, the adopted rules require person-centered service planning training in accordance with the CFC state plan amendment. The adopted rules also update terminology and clarify existing processes.

Changes were made in §2.553 to add a definition for the term "institution" because this term is added as part of the changes made in §2.554(a)(1)(A).

Changes were made in §2.554(a) to clarify that an individual, to be eligible for service coordination, must fit into one of two categories. The first category is individuals who are members of the LIDDA priority population and meet at least one of the criteria in §2.554(a)(1)(A) - (F). The second category, added as a new §2.554(a)(2), is nursing facility residents who are eligible for specialized services for an intellectual disability or a related condition pursuant to §1919(e)(7) of the Social Security Act (United States Code, Title 42, §1396r(e)(7)). Changes were also made in §2.554(a)(1)(A) to delete the requirement that the assessment by the designated LIDDA must be conducted within 30 calendar days before making the determination of eligibility for service coordination, and to add that the individual who has two or more documented needs that require services and supports other than service coordination as evidenced by the assessment may not reside in an institution. The agency made the changes in §2.554(a)(1)(A) to more accurately describe the current eligibility criteria for service coordination. Changes were made in §2.554(b) and (c) to reflect the formatting changes made in subsection (a). Minor editorial changes were also made in §2.554.

Changes were made in §2.555(b)(1)(A) and (B) to reflect the formatting changes made in §2.554(a).

DADS received written comments from Disability Rights Texas on the proposed rules. A summary of the comments and the responses follows.

Comment: The changes in §2.553(33) to the definition of "related condition" replaces "as defined in the Code of Federal Regulation" with "consistent with Code of Federal Regulations." The commenter recommends that the agency not make this change to prevent eligible individuals from being determined ineligible and to prevent misinterpretation of the definition in the federal regulation or implying that the definition is flexible.

Response: The phrase "as defined in the Code of Federal Regulation" is changed to "consistent with Code of Federal Regulations" because the agency is using the phrase "similar to that of persons with an intellectual disability" in the definition instead of "similar to that of mentally retarded persons," the phrase used in the federal regulation. The agency did not make a change in response to the comment.

Comment: The commenter asked if service coordination funded by general revenue, as described in §2.555(a)(3), includes service coordination related to the Preadmission Screening and Resident Review (PASRR) program, which is funded by a combination of state and federal funds. If not, the commenter stated that PASRR funding may need to be added in §2.555(a).

Response: There is no separate funding source to pay for service coordination related to the federally mandated PASRR program. A resident of a nursing facility who is eligible for specialized services for an intellectual disability or a related condition pursuant to §1919(e)(7) of the Social Security Act (United States Code, Title 42, §1396r(e)(7)) is eligible for service coordination related to the PASRR program. If the service coordination related to the PASRR program is provided during the last 180 days before the resident transitions to community-based services, the service coordination is funded by Medicaid targeted case management. Before the effective date of this rule, if service coordination related to the PASRR program was provided to the resident before the 180-day period, it was also funded by Medicaid targeted case management. When these rules become effective, service coordination related to the PASRR program provided before the 180-day period will likely be funded by state general revenue. The agency did not make a change in response to this comment.

Comment: The commenter stated that in §2.555(b)(1)(B), PASRR-related service coordination is not limited to "the last 180 days before the individual's discharge from the ICF/IID or nursing facility" and asked that the rule be changed accordingly.

Response: Section 2.555(b) describes the service coordination that is funded by Medicaid targeted case management. Service coordination related to the PASRR program that is provided during the last 180 days before the resident transitions to community-based services from the nursing facility is funded by Medicaid targeted case management. When these rules become effective, service coordination related to the PASRR program provided before the 180-day period will likely be funded by state general revenue. The agency did not make a change in response to this comment.

Comment: The commenter stated that §2.555(b)(1)(B), which stated "who resides in a nursing facility licensed in accordance with THSC Chapter 242 and who has been determined through a PASRR assessment to require specialized services," should not be deleted.

Response: This portion of the rule was deleted and replaced by the requirements in §2.555(b)(1)(B), which accurately describes the service coordination that is funded by Medicaid targeted case management. However, as stated in response to a previous comment, a resident of a nursing facility who is eligible for specialized services for an intellectual disability or a related condition pursuant to §1919(e)(7) of the Social Security Act (United States Code, Title 42, §1396r(e)(7)) is eligible for service coordination related to the PASRR program. If the service coordination related to the PASRR program is provided during the last 180 days before the resident transitions to community-based services from the nursing facility, the service coordination is funded by Medicaid targeted case management. When these rules become effective, service coordination related to the PASRR program provided before the 180-day period will likely be funded by state general revenue. The agency did not make a change in response to this comment.

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program; and Texas Health and Safety Code, §533A.0355, which provides that the HHSC executive commissioner shall adopt rules establishing the roles and responsibilities of local intellectual and developmental disability authorities.

§2.553. Definitions.

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

(1) Actively involved person--For an individual who lacks the ability to provide legally adequate consent and who does not have a legally authorized representative (LAR), a person whose significant and ongoing involvement with the individual is determined by the individual's designated MRA to be supportive of the individual based on the person's:

(A) observed interactions with the individual;

(B) knowledge of and sensitivity to the individual's preferences, values, and beliefs;

(C) availability to the individual for assistance or support; and

(D) advocacy for the individual's preferences, values, and beliefs.

(2) CARE--DADS Client Assignment and Registration System.

(3) CFC services--Community First Choice services. State plan services described in 1 Texas Administrative Code (TAC) Chapter 354, Subchapter A, Division 27 (relating to Community First Choice).

(4) DADS--The Department of Aging and Disability Services.

(5) Department--The Department of Aging and Disability Services.

(6) Designated LIDDA--As identified in DADS data system, the LIDDA responsible for assisting an individual and LAR or actively involved person to access services and supports.

(7) Designated MRA--Designated LIDDA.

(8) Duration--The specified period of time during which service coordination is provided to an individual.

(9) Frequency--The minimum number of times during a specified period that an individual is to be contacted by a service coordinator based on the individual's need for contacts as determined by person-directed planning.

(10) General revenue--Funds appropriated by the Texas Legislature for use by DADS.

(11) HCS Program--The Home and Community-based Services Program. A program operated by DADS as authorized by the Centers for Medicare and Medicaid Services in accordance with §1915(c) of the Social Security Act.

(12) ICF/IID--Intermediate care facility for individuals with an intellectual disability or related conditions. An ICF/IID is a facility in which ICF/IID Program services are provided.

(13) ICF/IID level-of-care--A level-of-care described in §9.238 of this title (relating to ICF/MR Level of Care I Criteria) or §9.239 of this title (relating to ICF/MR Level of Care VIII Criteria).

(14) ICF/IID Program--The Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions Program. A program operated by DADS that provides Medicaid-funded residential services to individuals with an intellectual disability or related conditions, as described in §1905(d) of the Social Security Act.

(15) ICF/MR--ICF/IID.

(16) ICF/MR Program--ICF/IID Program.

(17) Individual--A person who is or is believed to be a member of the LIDDA priority population.

(18) Institution--One of the following:

(A) an ICF/IID;

(B) a nursing facility;

(C) an assisted living facility licensed or subject to being licensed in accordance with THSC, Chapter 247;

(D) a residential child-care operation licensed or subject to being licensed by the Department of Family and Protective Services unless it is a foster family home or a foster group home;

(E) a facility licensed or subject to being licensed by the Department of State Health Services;

(F) a facility operated by the Department of Assistive and Rehabilitative Services; or

(G) a prison.

(19) Institution for mental diseases (IMD)--As defined in 25 TAC §419.373, a hospital of more than 16 beds that is primarily engaged in providing psychiatric diagnosis, treatment, and care of individuals with mental diseases, including medical care, nursing care, and related services.

(20) Intellectual disability--Consistent with Texas Health and Safety Code (THSC), §591.003, significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(21) LAR (legally authorized representative)--A person authorized by law to act on behalf of an individual with regard to a matter described in this subchapter, and who may be a parent, guardian, or managing conservator of a child, or the guardian of an adult.

(22) LIDDA--Local intellectual and developmental disability authority. An entity designated by the executive commissioner of the Texas Health and Human Services Commission in accordance with THSC, §533A.035.

(23) LIDDA priority population--A population as defined in §5.153 of this title (relating to Definitions).

(24) Local service area--A geographic area composed of one or more Texas counties.

(25) MCO--Managed care organization. This term has the meaning set forth in Texas Government Code, §536.001.

(26) Mental retardation--Intellectual disability.

(27) Mental retardation priority population or MR priority population--LIDDA priority population.

(28) MRA (mental retardation authority)--LIDDA.

(29) Parent Case Management Program--A program that utilizes experienced, trained parents of individuals with disabilities to provide case management for other families.

(30) Partners in Policy Making--A leadership training program administered by the Texas Planning Council for Developmental Disabilities for self-advocates and parents.

(31) Permanency planning--A philosophy and planning process that focuses on the outcome of family support for an individual under 22 years of age by facilitating a permanent living arrangement in which the primary feature is an enduring and nurturing parental relationship.

(32) Person-directed planning--A philosophy and planning process that empowers an individual and, on the individual's behalf, an LAR or actively involved person, to direct the development of a plan of services and supports.

(33) Plan of services and supports--A written plan that:

(A) describes the desired outcomes identified by the individual, or LAR or actively involved person on behalf of the individual;

(B) describes the services and supports to be provided to the individual, including service coordination; and

(C) identifies the frequency, in accordance with §2.556(d)(1) of this subchapter (relating to LIDDA's Responsibilities), and duration of service coordination to be provided to the individual.

(34) Related condition--Consistent with Code of Federal Regulations, Title 42, §435.1010, a severe and chronic disability that:

(A) is attributable to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, other than mental illness, found to be closely related to an intellectual disability because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with an intellectual disability, and requires treatment or services similar to those required for those persons with an intellectual disability;

(B) is manifested before the person reaches 22 years of age;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in three or more of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

(35) Relative--A person related to the individual within the fourth degree of consanguinity or within the second degree of affinity.

(36) Service coordination--Assistance in accessing medical, social, educational, and other appropriate services and supports that will help an individual achieve a quality of life and community participation acceptable to the individual (and LAR on the individual's behalf) as follows:

(A) crisis prevention and management--linking and assisting the individual and LAR or actively involved person to secure services and supports that will enable them to prevent or manage a crisis;

(B) monitoring--ensuring that the individual receives needed services, evaluating the effectiveness and adequacy of services, and determining if identified outcomes are meeting the individual's needs and desires as indicated by the individual and LAR or actively involved person;

(C) assessment--identifying the individual's needs and the services and supports that address those needs as they relate to the nature of the individual's presenting problem and disability; and

(D) service planning and coordination--identifying, arranging, advocating, collaborating with other agencies, and linking for

the delivery of outcome-focused services and supports that address the individual's needs and desires as indicated by the individual and LAR or actively involved person.

(37) State MH facility (state mental health facility)--A state hospital or state center with an inpatient psychiatric component operated by the Department of State Health Services.

(38) State supported living center--A state-supported and structured residential facility that is an ICF/IID operated by DADS to provide persons with an intellectual disability a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills, but does not include a community-based facility owned by DADS.

(39) Subaverage general intellectual functioning--Consistent with THSC, §591.003, measured intelligence on standardized general intelligence tests of two or more standard deviations (not including standard error of measurement adjustments) below the age-group mean for the tests used.

(40) THSC--Texas Health and Safety Code.

(41) TxHmL Program--The Texas Home Living Program. A program operated by DADS as authorized by the Centers for Medicare and Medicaid Services in accordance with §1915(c) of the Social Security Act.

§2.554. Eligibility.

(a) To be eligible for service coordination, an individual must:

(1) be a member of the LIDDA priority population and must meet at least one of the following criteria:

(A) have two or more documented needs that require services and supports other than service coordination as evidenced by an assessment conducted by the designated LIDDA and not reside in an institution;

(B) be:

(i) in the process of enrolling in the ICF/IID Program; or

(ii) in the process of enrolling in the HCS or TxHmL Program or be currently enrolled in the HCS or TxHmL Program; or

(iii) in the process of enrolling in CFC services provided through an MCO;

(C) be 21 years of age or older with an ICF/IID level-of-care and receiving CFC services through an MCO;

(D) be seeking admission to a state supported living center;

(E) be transitioning from an ICF/IID or from a nursing facility to community-based services; or

(F) be transitioning from a state MH facility to community-based services; or

(2) be a nursing facility resident who is eligible for specialized services for an intellectual disability or a related condition pursuant to §1919(e)(7) of the Social Security Act (United States Code, Title 42, §1396r(e)(7)).

(b) Community-based services as referenced in subsection (a)(1)(E) and (F) of this section does not include services provided in an ICF/IID or nursing facility or services provided in another institutional setting.

(c) The assessment required by subsection (a)(1)(A) of this section must be conducted using DADS form "Service Coordination Assessment--Intellectual Disability Services" which is available at www.dads.state.tx.us.

§2.555. Funding Service Coordination.

(a) Service coordination may be funded by:

(1) personal funds or third-party insurance other than Medicaid;

(2) Medicaid targeted case management; or

(3) general revenue.

(b) Service coordination funded by Medicaid targeted case management:

(1) may be provided only to an individual who is a Medicaid recipient and only if:

(A) the individual meets at least one of the criteria described in §2.554(a)(1)(A) - (D) of this subchapter (relating to Eligibility); or

(B) the individual meets the criteria described in §2.554(a)(1)(E) or (a)(2) of this subchapter and the service coordination is provided during the last 180 days before the individual transitions to community-based services from the ICF/IID or nursing facility; and

(2) may not be provided to an individual:

(A) who resides in an institution for mental diseases; or

(B) who is enrolled in a Medicaid waiver program other than the HCS or TxHmL Program.

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

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CHAPTER 9. INTELLECTUAL DISABILITY SERVICES--MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), amendments to §§9.151, 9.153 - 9.155, 9.158 - 9.162, 9.166, 9.168 - 9.171, 9.173, 9.174, 9.177, 9.178, 9.185, 9.188, 9.190, and 9.192, in Subchapter D, Home and Community-Based Services (HCS) Program; §9.551, 9.553 - 9.556, 9.558, 9.567, 9.568, 9.570, 9.571, 9.573, 9.576 - 9.580, and 9.583, in Subchapter N, Texas Home Living (TxHmL) Program, in Chapter 9, Intellectual Disability Services-Medicaid State Operating Agency Responsibilities. Amendments to §§9.153, 9.155, 9.158, 9.159, 9.166, 9.168, 9.170, 9.174, 9.177, 9.188, 9.190, 9.553, 9.555, 9.556, 9.558, 9.567, 9.568, 9.578, 9.579, and 9.583 are adopted with changes to the proposed

text as published in the November 27, 2015, issue of the *Texas Register* (40 TexReg 8462). Amendments to §§9.151, 9.154, 9.160 - 9.162, 9.169, 9.171, 9.173, 9.178, 9.185, 9.192, 9.551, 9.554, 9.570, 9.571, 9.573, 9.576, 9.577, and 9.580 are adopted without changes to the proposed text.

The adopted rules in Chapter 9, Subchapters D and N, implement Community First Choice (CFC), a Medicaid state plan option governed by the Code of Federal Regulations, Title 42 (42 CFR), Chapter 441, Subchapter K, regarding Home and Community-Based Attendant Services and Supports State Plan Option (Community First Choice). CFC services are available to individuals enrolled in the DADS §1915(c) waiver programs of the Home and Community-Based Services (HCS) Program, Texas Home Living (TxHmL) Program, the Community Living Assistance and Support Services (CLASS) Program, and the Deaf-Blind with Multiple Disabilities (DBMD) Program. CFC is authorized by Texas Government Code §534.152 and is governed by rules of the Health and Human Services Commission in Texas Administrative Code, Title 1, Chapter 354, Medicaid Health Services, Subchapter A, Purchased Health Services, Division 27, Community First Choice (CFC). The Centers for Medicare and Medicaid Services (CMS) approved a state plan amendment to implement CFC effective June 1, 2015. Texas Government Code, §534.152(g) authorizes DADS to contract with providers participating in the HCS, TxHmL, CLASS, and DBMD Programs for the delivery of basic attendant and habilitation services through CFC and gives DADS regulatory and oversight authority over those providers.

CFC services in the HCS and TxHmL Programs consist of: (1) CFC personal assistance services/habilitation (CFC PAS/HAB), which provides all the activities of HCS supported home living and TxHmL community support, except transportation; (2) CFC emergency response services (CFC ERS), which is provided as a distinct CFC service instead of as an adaptive aid; and (3) CFC support management. The adopted rules give an individual the option to receive CFC PAS/HAB through a program provider or the consumer directed services (CDS) option.

The adopted rules also require an HCS and TxHmL Program provider to develop a transportation plan if transportation as a supported home living or as a community support activity is included on the individual plan of care (IPC). The transportation plan is used to document how transportation will be delivered to support an individual's desired outcomes and purposes for transportation as identified in the person-directed plan (PDP). The plan helps ensure that the transportation hours requested are the most appropriate amount, are cost effective, and are necessary to enable an individual's independence and integration in the community.

The adopted rules, for consistency with the HCS and TxHmL waiver applications, add to the eligibility criteria for HCS and TxHmL Programs that an applicant or individual must require the provision of: (1) at least one program service per month, or at least one monitoring visit by a service coordinator per month; and (2) at least one program service per IPC year.

The adopted rules increase the dental treatment service limit from $1,000 to $2,000 during an IPC year to comply with the 2016-17 General Appropriations Act (Article II, Department of Aging and Disability Services, House Bill 1, 84th Legislature, Regular Session, 2015), which provided additional funds to increase the HCS Program dental treatment service limit.

The adopted rules also make editorial changes for clarity.

Changes were made in §9.153(11) and §9.553(9) in the definition of "CFC ERS provider" to delete the references to §9.174(j)(1) and §9.578(x)(1) because licensure as a personal emergency response system is no longer a requirement and §9.174(j)(1) and §9.578(x)(1) were deleted.

Changes were made in §9.153(44) and §9.553(34) in the definition of "implementation plan" to clarify that an implementation plan is not required for transportation provided as a supported home living activity or as a community support activity because they require a transportation plan.

Changes were made in §9.153(37) and §9.553(27) in the definition of "health-related tasks" for clarification that some health maintenance tasks do not require delegation.

Changes were made in §9.155(c) to clarify that an individual is not eligible for a CFC service if the individual is receiving host home/companion care, supervised living, or residential support.

Changes were made in §9.155(d) to reference the CFC eligibility criteria in §9.155(c), including the requirement that the individual is not receiving host home/companion care, supervised living, or residential support, instead of restating the criteria in §9.155(d).

Changes were made to §9.158(j)(4), §9.166(a)(1)(B) and (b)(3) to require an applicant's or individual's service planning team, if CFC PAS/HAB is included on the PDP or if the IPC needs to be revised for CFC PAS/HAB, to complete DADS HCS/TxHmL CFC PAS/HAB Assessment form to determine the number of CFC PAS/HAB hours the applicant or individual needs. The agency is requiring completion of the form to help ensure a consistent method for determining the number of CFC PAS/HAB hours an applicant or individual needs.

An editorial change was made in §9.158(k)(15)(A)(i) to delete the title of §9.155 because the title is included earlier in the section.

Changes were made in §9.158(o) and §9.567(s) to require the local intellectual and developmental disability authority (LIDDA), if CFC PAS/HAB is included on the PDP, to provide a copy of the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form to the selected program provider and financial management services agency (FMSA). Changes were also made to §9.166(a)(2) to require the service coordinator to send, if CFC PAS/HAB is included on the PDP, a copy of the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form to the program provider and FMSA within 10 calendar days after the PDP is updated. The agency also added a requirement in §9.166(b)(3)(A)(ii) for the service coordinator to send a copy of the CFC PAS/HAB Assessment form to the program provider for review within 14 calendar days after notification that an IPC must be reviewed. The agency made the changes so the program provider and FMSA will have necessary information to carry out their responsibilities in providing services to an applicant or individual.

Changes were made in §9.158(q)(1)(A) and §9.166(a)(4)(A)(i) and (b)(3)(D)(i)(I) to clarify that the HCS program provider is not required to develop an implementation plan for transportation as a supported home living activity.

Changes were made in reformatted §9.158(q)(1) and §9.166(b)(5)(A)(ii) and (d)(4)A) to delete "authorized" to describe an IPC. The agency made the changes because the definition of "IPC" in §9.153(48) includes that it is authorized by DADS.

Changes were made in §9.158(q)(1) and §9.166(a)(4)(A) and (b)(3)(D)(i) to state that an implementation plan for CFC

PAS/HAB is based on the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form (in addition to the PDP and IPC). The agency made the changes because the CFC PAS/HAB Assessment form includes the number of CFC PAS/HAB hours an applicant or individual needs.

Changes were made in §9.158(q)(2), §9.166(a)(4)(B) and (a)(7)(B), §9.168(f), §9.578(c)(2)(B), and §9.583(s)(5) to correctly use "PDP" instead of "IPC" or "proposed IPC."

Changes were made in §9.159(a) and §9.174(g)(1)A) and (h)(1)(B) to update rule cross-references.

Changes were made in §9.159(c)(11)(A), §9.170(1)(D) and (4)(N), and §9.174(g)(1)(A) to correct the title of the Transition Assistance Services (TAS) Assessment and Authorization form.

Changes were made in §9.159(c)(12)(B) and (c)(13) and §9.170(1)(E) and (4)(O) to correct the title of the Home and Community-based Services (HCS) Program Pre-enrollment MHM Authorization Request form.

Changes were made to add §9.159(c)(14) to state that the type and amount of CFC PAS/HAB must be supported by the DADS HCS/TxHmL CFC PAS/HAB Assessment form. The agency made the changes because the CFC PAS/HAB Assessment form includes the number of CFC PAS/HAB hours an applicant or individual needs.

Changes were made in §9.166(a)(3) to add that if CFC PAS/HAB is included on the PDP, the program provider and the service planning team must review the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form (in addition to reviewing the PDP). The agency made the changes to ensure that the CFC PAS/HAB Assessment form is reviewed during the process to develop the proposed renewal IPC because the CFC PAS/HAB Assessment form includes the number of CFC PAS/HAB hours an applicant or individual needs.

A change was made in §9.166(a)(7)(A)(iii) to require a program provider to provide CFC PAS/HAB in accordance with an implementation plan that is based on the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form. The agency made the change because the CFC PAS/HAB Assessment form includes the number of CFC PAS/HAB hours an applicant or individual needs.

Changes were made in §9.166(b)(3)(D) and (d)(2)(C)(ii) to clarify that the program provider must develop or revise a transportation plan if transportation as a supported home living activity is added to or modified on the PDP.

Changes were made in §9.170(1)(D) to add that DADS pays, if requested, a TAS service fee to an HCS program provider in accordance with the *HCS Program Billing Guidelines.* The agency made the changes to include in rule DADS current practice of paying a program provider a TAS service fee.

A change was made in §9.170(4) to move the text in (4)(B)(vii) to a new paragraph (4)(Q). The agency made the change for clarification.

A change was made in §9.174(a)(12) to clarify that the IPC for each individual is renewed or revised in accordance with §9.166 and is authorized by DADS in accordance with §9.160.

A change was made in §9.174(a)(53)(B) to add the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form to the documentation a program provider must maintain in an individual's record. A change was also made in §9.190(e)(5)(B) to add the completed CFC PAS/HAB Assessment form to the documentation the service coordinator maintains for an individual. The agency made the changes to ensure a program provider and service coordinator maintain a copy of the CFC PAS/HAB Assessment form in an individual's record because the CFC PAS/HAB Assessment form includes the number of CFC PAS/HAB hours an applicant or individual needs.

A change was made in §9.177(b)(1)(B) to clarify that if an HCS program provider employs or contracts with a person or entity to provide CFC ERS, the person or entity must provide CFC ERS at the reimbursement rate (as opposed to the direct services portion of the HCS Program rate) unless the program provider agrees to pay a higher amount.

A change was made in §9.188(b)(4) to correct the reference to §9.153(32)(D).

A change was made in §9.190(b)(2)(A) to correct the title of §9.154.

A change was made in §9.190(e)(8)(A)(iii) to correct the title of §2.556.

Changes were made to reformat §9.555(a)(1) so the term "transportation" clearly corresponds with the reference in §9.554(e). The agency made the changes to clarify that a program provider can only provide and bill for community support if the activity provided is "transportation" and because "assistance in obtaining transportation" is provided and billed for as CFC PAS/HAB.

A change was made in §9.556(c) to reference the CFC eligibility criteria in §9.556(b) instead of restating the criteria in §9.556(c).

A change was made in §9.558(b)(2) to state that the services on an IPC must be supported by the DADS HCS/TxHmL CFC PAS/HAB Assessment form. The agency made the change for clarification because completion of this assessment form is a new requirement.

A change was made in §9.567(k) - (q) to reorganize and reformat the text so that the section contains a more accurate chronological description of steps necessary to accomplish enrollment of an applicant into the TxHmL Program.

A change was made in reformatted §9.567(k)(3)(B) to require an applicant's service planning team, if CFC PAS/HAB is included on the PDP, to complete DADS HCS/TxHmL CFC PAS/HAB Assessment form to determine the number of CFC PAS/HAB hours the applicant needs. The agency is requiring completion of the form to help ensure a consistent method for determining the number of CFC PAS/HAB hours an applicant needs.

A change was made to §9.567(o) to clarify that if transportation as a community support activity is included on the PDP, a transportation plan must be developed: (1) by the program provider if the individual chooses a program provider to provide transportation as a community support activity; or (2) by the service planning team if the individual chooses to receive transportation as a community support activity through the CDS option.

Changes were made to add new §9.567(s) to require the LIDDA to provide the selected program provider and FMSA, if applicable, copies of all enrollment documentation, including a copy of the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form if CFC PAS/HAB is included on the PDP. The agency made the changes so the program provider and FMSA will have the information necessary to carry out their responsibilities in providing services to an individual.

A change was made in §9.568(a)(1) to clarify that the service planning team must initiate revisions to the PDP (in addition to the IPC) in response to changes to the individual's needs and outcomes.

A change was made to §9.568(a) to require the service planning team, if CFC PAS/HAB is included on the PDP during renewal of an IPC or if a revised IPC adds or changes the amount of CFC PAS/HAB, to complete DADS HCS/TxHmL CFC PAS/HAB Assessment form to determine the number of CFC PAS/HAB hours the individual needs. The agency is requiring completion of the form to help ensure a consistent method for determining the number of CFC PAS/HAB hours an individual needs.

A change was made to add new §9.568(a)(4) to require the service coordinator to send the program provider and FMSA a copy of the revised PDP, the current IPC, and if CFC PAS/HAB is included on the PDP, a copy of the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form. The agency made the change so the program provider and FMSA will have the necessary information to carry out their responsibilities in providing services to an individual.

A change was made in §9.578(b)(1) to add the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form to the documentation a program provider must maintain in an individual's record. A change was also made in §9.583(e)(2) to add the completed CFC PAS/HAB Assessment form to the documentation the service coordinator maintains for an individual. The agency made the changes to ensure a program provider and service coordinator maintain a copy of the CFC PAS/HAB Assessment form in an individual's record because the CFC PAS/HAB Assessment form includes the number of CFC PAS/HAB hours an applicant or individual needs.

A change was made in §9.578(c)(2)(A) to clarify that an implementation plan is not required for CFC support management or transportation provided as a community support activity.

A change was made in §9.579(c)(2) to clarify that if a TxHmL program provider employs or contracts with a person or entity to provide CFC ERS the person or entity must provide CFC ERS at the reimbursement rate (as opposed to the direct services portion of the TxHmL Program rate) unless the program provider agrees to pay a higher amount. Other editorial changes were made to the subsection for clarification.

A change was made in §9.583(a) to state that a LIDDA must offer TxHmL Program services to an applicant instead of notifying an applicant of a TxHmL Program vacancy. A change was made in §9.583(b) to replace "requests for enrollment" with "processes enrollments." The agency made the changes to make the terminology consistent with that in §9.567. The agency also made an editorial change in §9.583(b) to delete the title of §9.567 because the title is included earlier in the section.

A change was made in §9.583(g)(2)(A)(ii) to correct the title of §9.554.

Changes were made in §9.583(h) to delete the requirement in paragraph (7) for a service coordinator to keep records pertaining to the implementation of an individual's PDP. The agency made the changes because a program provider is responsible for development and compliance with an implementation plan.

A change was made in §9.583(l)(2) to require the service coordinator, if CFC PAS/HAB is included on the PDP, to submit a copy of the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form to the program provider. The agency made the change so the program provider will have the information necessary to carry out its responsibilities in providing CFC PAS/HAB.

A change was made in §9.583(l)(2) to delete information regarding provider requirements that is included elsewhere in the subchapter.

DADS received written comments from the Private Providers Association of Texas, the Providers Alliance for Community Services of Texas, and five individuals. A summary of the comments and the responses follows.

Comment: Two commenters asked the agency to consider making transportation a billable CFC service instead of keeping transportation as a supported home living activity or a community support activity. The commenters stated that allowing a service provider of CFC PAS/HAB to provide transportation would make the transition from supported home living and community support to CFC PAS/HAB less complicated because (1) a CFC PAS/HAB service provider who lives in the same home as the individual could provide transportation; and (2) the provider could include unanticipated trips to the store or for medical appointments and errands as part of CFC PAS/HAB as was done before in supported home living and community support.

Response: Transportation is not included as an activity for CFC PAS/HAB in §9.153(13) or §9.553(11) because it is not included in the CFC state plan amendment approved by CMS. Effective June 1, 2016, a service provider of CFC PAS/HAB may not live in the same residence as the individual. This change will be incorporated into the CFC Billing and Payment Guidelines. When this change is effective, a service provider of CFC PAS/HAB will also be able to provide transportation as a supported home living or community support activity. A program provider may include on a transportation plan hours for transportation as a supported home living or community support activity for unanticipated circumstances. If the number of hours for transportation as a supported home living or community support activity needs to be revised on the IPC and the transportation plan, the program provider must comply with the requirements in §9.166 or §9.568. The agency did not make a change in response to the comment.

Comment: A commenter stated that the description of escort services in the definition of "CFC PAS/HAB" in §9.153(13)(A)(i)(III) could lead to confusion about the difference between CFC PAS/HAB and supported home living transportation.

Response: The agency, to clarify the distinction between CFC PAS/HAB and transportation as a supported home living or community support activity, made changes to the definition of "CFC PAS/HAB" in §9.153(13) and in §9.553(11) to state that it does not include transporting the individual, which means driving the individual from one location to another.

Comment: A commenter recommended that the agency replace "traveling around and participating in the community" in the definition of "IADLs" in §9.153(39) with "community integration, including how to get around in the community" to reduce confusion about CFC PAS/HAB and supported home living transportation and to make §9.153(39) consistent with §9.153(13)(B)(vi) in the definition of "CFC PAS/HAB."

Response: The agency did not make a change in §9.153(39) or in §9.553(30) in the definition of "IADLs" because the definition of this term is consistent with the CFC state plan amendment approved by CMS.

Comment: A commenter, citing §9.153(32), stated that the definition of "good cause" is unclear and very open to subjective interpretation.

Response: In §9.153(33), the definition of "good cause" is worded broadly to allow DADS to take into consideration the variety of circumstances that may prevent a CFC ERS provider from being able to comply with the requirements in §9.174(j). The agency did not make a change in response to the comment.

Comment: A commenter expressed confusion about where an individual must live to receive transportation as a supported home living activity and to receive CFC PAS/HAB. The commenter also stated that the rules do not clearly distinguish between supported home living/transportation and CFC PAS/HAB, and do not clearly state that receipt of supported home living/transportation is limited to individuals receiving CFC services. Further, the commenter stated that referring to supported home living as an activity gives the impression that transportation is only one of many supported home living activities available to an individual without describing elsewhere what other supported home living activities are available. The commenter stated that other rules refer to supported home living as if it is the same billable service that existed prior to June 1, 2015. The commenter also stated that the definition of "transportation plan" in §9.153(101) does not state that the plan is applicable only to a person receiving CFC services or transportation as a supported home living activity. The commenter stated that because the term "transportation plan" is used throughout the rule and tied only to a supported home living activity, determining to whom the plan is available is not clear.

Response: In accordance with §9.174(a)(32) and (46), neither CFC PAS/HAB nor transportation as a supported home living activity is available to an individual who is receiving host home/companion care, supervised living, or residential support. Further, §9.170(4)(P) states that DADS does not pay for a CFC service if the service is provided to an individual receiving host home/companion care, supervised living, or residential support. Therefore, CFC PAS/HAB and transportation as a supported home living activity are not available to an individual who is receiving host home/companion care, supervised living, or residential support. To clarify the eligibility requirements for CFC services, the agency also made changes in §9.155(c) to add that an applicant or individual is eligible for a CFC service if the applicant or individual is not receiving host home/companion care, supervised living, or residential support. The rules continue to include supported home living and the list of activities that fall within its description because that information is included in the HCS waiver application. However, in accordance with §9.154(d), a program provider may only provide and bill for supported home living if the activity provided is transportation as described in §9.174(a)(33)(C). Other activities that are part of supported home living must be provided and billed as CFC PAS/HAB. In accordance with §9.158(q) and §9.166, a program provider must develop a transportation plan if transportation as a supported home living activity is included on the PDP. The agency made changes in the definition of "transportation plan" in §9.153(101) and §9.553(79), respectively, to clarify that transportation is a supported home living or community support activity.

Comment: The commenter stated that §9.153 incudes definitions for almost every term in the HCS Program except for host home/companion care, supported home living/transportation, supervised living, and residential support and suggested that the agency add in §9.153 descriptions/definitions for these terms to make it easier for a person to look for these in §9.153 and then locate the provisions where these terms are used.

Response: Although the agency added definitions in §9.153 for "cognitive rehabilitation therapy," "pre-enrollment minor home modifications," "pre-enrollment minor home modifications assessment," and "TAS--Transition Assistance Services," the agency declines to add a description of host home/companion care, supervised living, or residential support in §9.153 because §9.154(c) states that HCS Program services are defined in Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us, and because a description of host home/companion care, supervised living, and residential support is provided in §9.174(a). The agency will consider adding a definition in §9.153 of the HCS Program services, including supported home living/transportation, in a future rule proposal. The agency did not make a change in response to the comment.

Comment: A commenter stated it is not clear from the rules that CFC services are provided only in a person's own home or family home.

Response: Section 9.170(4)(P) states that DADS does not pay for a CFC service if the service is provided to an individual receiving host home/companion care, supervised living, or residential support. The requirement that CFC PAS/HAB and CFC ERS are available only to an individual who is not receiving host home/companion care, supervised living, or residential support is included in §9.174(a)(46) and (j)(2)(A), respectively. In response to this comment, the agency clarified this requirement in §9.174(a)(32) and made changes in §9.155(c) to add that an applicant or individual is eligible for a CFC service if the applicant or individual is not receiving host home/companion care, supervised living, or residential support.

Comment: A commenter recommended defining transportation in §9.153 or §9.154(d) as the "act of driving an individual from one place to another" because §9.154(d) specifies that a program provider may only provide and bill for supported home living if the activity is transportation. The commenter also noted that the reference in §9.154(d) to "transportation" in §9.174(a)(33)(C) also includes "securing transportation," which would likely be billable as CFC PAS/HAB. Further, the commenter requested clarification regarding the ability to bill for transportation and CFC PAS/HAB at the same time if the services are provided by different service providers.

Response: A provider may bill for CFC PAS/HAB and the supported home living activity of transportation at the same time if the services are provided by different service providers as described in the CFC Billing Guidelines, the HCS Program Billing Guidelines, and TxHmL Program Billing Guidelines. In accordance with the CFC Billing Guidelines, securing transportation is a billable activity of CFC PAS/HAB. For clarification, the agency amended the definition of CFC PAS/HAB in §9.153 to state that it does not include transporting the individual, which means driving the individual from one location to another. The agency also reformatted §9.174(a)(33) so only the term "transportation" corresponds with the reference in §9.154(d).

Comment: A commenter asked if the CFC eligibility requirement in §9.155(d)(3) for an applicant or individual receiving MAO Medicaid to receive an HCS Program service at least monthly will require unnecessary services to be added to an IPC. The

commenter expressed concerns about the monitoring and enforcement of the requirement. The commenter also stated that §9.155(d) is referenced in §9.158(j)(15)(B) but it is actually referenced in §9.155(k)(15)(B).

Response: The requirement in §9.155(d)(3) should not result in adding unnecessary services to an IPC. Each service on the IPC must meet the criteria in §9.159(c), which effectively prohibits unnecessary services from being included on the IPC. DADS will disseminate information about monitoring and enforcement processes for the requirements in §9.155(c) and (d) as those processes are developed. The agency is unclear of the commenter's concerns about the reference to §9.155(d). Section 9.155(d) is correctly referenced in §9.158(k)(14)(B)(ii) and (15)(B)(i). The agency did not make a change in response to the comment.

Comment: A commenter expressed concern regarding the difficulty of capturing in a transportation plan an adequate number of transportation hours, particularly considering the frequency of unforeseen transportation activities that may occur through a person's daily life, including social activities that do not occur on a regular basis, non-routine doctors' appointments, inconsistent work schedules, and day-to-day traffic issues such as accidents or construction that may add to transportation time.

Response: A program provider may include on a transportation plan hours for transportation as a supported home living activity for unanticipated circumstances. If the number of hours for transportation as a supported home living activity need to be revised on the IPC and the transportation plan, the program provider must comply with the requirements in §9.166. The agency did not make a change in response to the comment.

Comment: A commenter expressed concern that §9.166(a)(4)(A) states that no implementation plan is necessary for CFC support management, but in §9.166(f) CFC support management is included on the IPC.

Response: The commenter is correct that whether an individual will receive CFC support management is noted on the IPC, as described in §9.153(48), but the program provider is not required to develop an implementation plan for CFC support management. The agency clarified in the definition of "implementation plan" in §9.153(44) and §9.553(34) that an implementation plan is not required for CFC support management.

Comment: A commenter stated that references to "supported home living" not associated with supported home living transportation services should be deleted from the rules to avoid confusion. The commenter suggested that for clarity and consistency "supported home living transportation" should replace "supported home living," including in §§9.168(c), 9.170(1)(A), 9.170(2)(B), and 9.177(h) and (p). The commenter also suggested that the supported home living activities specified in §9.174(a)(33) should only be included as CFC PAS/HAB activities.

Response: Except for receiving transportation as a supported home living activity, individuals in the HCS Program must receive CFC PAS/HAB instead of supported home living because of the requirement to use non-waiver resources before using waiver resources. However, supported home living and the list of various activities that fall within its description are included in the HCS waiver application and, therefore, are still included in the rules. The agency did not make a change in response to the comment.

Comment: A commenter stated that in §9.174(j) "ERS provider" and "program provider" are used interchangeably throughout and that many of the requirements are also found in Title 40, Chapter 52 (relating to Contracting to Provide Emergency Response Services). The commenter also stated that an emergency response system was previously available to individuals in the HCS Program as an adaptive aid without the majority of the potentially administratively burdensome requirements listed in §9.174(j) for which a program provider is not being reimbursed. The commenter also recommended including language in §9.174(j) that requires the program provider to ensure that a contracted service provider of ERS complies with §9.174(j).

Response: The terms "CFC ERS provider" and "program provider" are each defined in §9.153 and are not used interchangeably in §9.174(j). The use of each term is based on the requirement being addressed. The CFC ERS requirements in §9.174(j) were derived from 40 TAC Chapter 52 and are necessary to help ensure the protection of an individual's health and welfare. The requirement for a program provider to ensure that a contractor of the program provider complies with the HCS Program rules is addressed in §49.308 of this title (relating to Subcontracts). The agency did not make a change in response to the comment.

Comment: A commenter, citing §9.174(j)(1), stated that providers of emergency response services will no longer require a license and this rule specifies that only a licensed provider may deliver CFC ERS.

Response: The agency agrees that, due to recent legislation, a personal emergency response system provider will no longer require a license in accordance with the Department of State Health Services rules in 25 TAC Chapter 140, Subchapter B, Personal Emergency Response System Providers. The agency deleted this requirement in §9.174(j)(1) and §9.578(x)(1).

Comment: A commenter stated that the training required in §9.177(d)(2) and §9.579(d)(2) appears to apply to a staff member who completes the implementation plan for HCS and TxHmL Program services as well as for CFC services. The commenter stated that while this is not a concern, if the requirement applies only to staff members who complete the implementation plan for CFC services, then this should be stated in §9.177(d)(2) and §9.579(d)(2). The commenter also stated that providers need information on where this training may be received.

Response: In response to the comment, DADS made changes in §9.177(d)(2) and §9.579(d)(2) to specify that a staff member who participates in developing an implementation plan for CFC PAS/HAB must complete person-centered service planning training approved by HHSC. These changes are consistent with the CFC state plan amendment approved by CMS. Specifics about the HHSC-approved training will be posted on the HHSC website in the future.

Comment: Three commenters expressed concern that §9.177(j)(1) and §9.579(o)(1) allow professionals, such as a licensed professional counselor, psychologist, and licensed clinical social worker who may not have adequate training and experience to provide behavioral support. The commenters also suggested allowing certain persons supervised by a board certified behavior analyst to be service providers of behavioral support instead of allowing other professionals listed in the rule who may not be as qualified to provide behavioral support.

Response: The agency's position is that a licensed professional counselor, a psychologist, and a licensed clinical social worker

are qualified to provide behavioral support. Further, the addition in §9.177(j)(1) and §9.579(o)(1), effective September 1, 2014, of a licensed professional counselor and a licensed clinical social worker as qualified service providers of behavioral support benefits individuals by helping to ensure a sufficient pool of service providers. Adding new professionals to the list of qualified providers of behavioral support is outside the scope of these rules and will require additional research. The agency did not make a change in response to the comment.

Comment: A commenter stated it is clear in both the CFC Billing Guidelines and DADS Information Letter 2015-28 that a CFC PAS/HAB service provider may live in the same residence as the individual, but the rules do not state this. The commenter suggested that the rules state that a service provider of CFC PAS/HAB may live in the same residence as the individual and state the settings in which CFC PAS/HAB may be provided. The commenter is concerned that a CFC PAS/HAB service provider who lives in the same residence as an individual is prohibited from providing supported home living transportation. The commenter also stated it is clear in both the CFC Billing Guidelines and DADS Information Letter 2015-28 that if the individual is a minor the parent or legal guardian may not be the CFC PAS/HAB provider, but the rules do not make this clear. The commenter also stated the rules do not make it clear that if an individual is an adult, the parent or legal guardian may be the individual's CFC PAS/HAB service provider.

Response: Effective June 1, 2016, a service provider of CFC PAS/HAB may not live in the same residence as the individual. This change will be incorporated into the CFC Billing and Payment Guidelines. When this change is effective a service provider of CFC PAS/HAB will also be able to provide transportation as a supported home living activity. The agency made changes in §9.177(u)(1) and §9.579(u)(1) to require a program provider to ensure that a service provider of CFC PAS/HAB is not the spouse of the individual or a parent of the individual if the individual is a minor, which is consistent with the CFC state plan amendment approved by CMS.

Comment: A commenter requested that the qualifications for a CFC PAS/HAB service provider in §9.177(u)(1)(C) and (u)(2)(B) be subjected to certain financial limitations to ensure program providers are not unduly pressured to send direct care staff to extensive training that is not reimbursable or necessary. The commenter also recommended clarification regarding whether §9.177(u)(1)(C) and (u)(2)(B) apply to backup staff of a person receiving CFC PAS/HAB.

Response: The qualifications for a CFC PAS/HAB service provider described in §9.177(u)(1)(C) and (u)(2)(B) are required by federal regulations governing CFC and the CFC state plan amendment approved by CMS. As described in §9.174(a)(58)(B)(i), a person identified in the service backup plan, if paid to provide the service, must meet the qualifications described in the HCS Program rules, including §9.177(u). The agency did not make a change in response to the comment.

SUBCHAPTER D. HOME AND COMMUNITY-BASED SERVICES (HCS) PROGRAM AND COMMUNITY FIRST CHOICE (CFC)

40 TAC §§9.151, 9.153 - 9.155, 9.158 - 9.162, 9.166, 9.168 - 9.171, 9.173, 9.174, 9.177, 9.178, 9.185, 9.188, 9.190, 9.192

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

§9.153. Definitions.

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

(1) Actively involved--Significant, ongoing, and supportive involvement with an applicant or individual by a person, as determined by the applicant's or individual's service planning team or program provider, based on the person's:

(A) interactions with the applicant or individual;

(B) availability to the applicant or individual for assistance or support when needed; and

(C) knowledge of, sensitivity to, and advocacy for the applicant's or individual's needs, preferences, values, and beliefs.

(2) ADLs--Activities of daily living. Basic personal everyday activities, including tasks such as eating, toileting, grooming, dressing, bathing, and transferring.

(3) Alarm call--A signal transmitted from an individual's CFC ERS equipment to the CFC ERS response center indicating that the individual needs immediate assistance.

(4) Applicant--A Texas resident seeking services in the HCS Program.

(5) Behavioral emergency--A situation in which an individual's severely aggressive, destructive, violent, or self-injurious behavior:

(A) poses a substantial risk of imminent probable death of, or substantial bodily harm to, the individual or others;

(B) has not abated in response to attempted preventive de-escalatory or redirection techniques;

(C) is not addressed in a written behavior support plan; and

(D) does not occur during a medical or dental procedure.

(6) Business day--Any day except a Saturday, Sunday, or national or state holiday listed in Texas Government Code §662.003(a) or (b).

(7) Calendar day--Any day, including weekends and holidays.

(8) CDS option--Consumer directed services option. A service delivery option as defined in §41.103 of this title (relating to Definitions).

(9) CFC--Community First Choice.

(10) CFC ERS--CFC emergency response services. Backup systems and supports used to ensure continuity of services and supports. CFC ERS includes electronic devices and an array of available technology, personal emergency response systems, and other mobile communication devices.

(11) CFC ERS provider--The entity directly providing CFC ERS to an individual, which may be the program provider or a contractor of the program provider.

(12) CFC FMS--The term used for FMS on the IPC of an applicant or individual if the applicant or individual receives only CFC PAS/HAB through the CDS option.

(13) CFC PAS/HAB--CFC personal assistance services/habilitation. A service that:

(A) consists of:

(i) personal assistance services that provide assistance to an individual in performing ADLs and IADLs based on the individual's person-centered service plan, including:

(I) non-skilled assistance with the performance of the ADLs and IADLs;

(II) household chores necessary to maintain the home in a clean, sanitary, and safe environment;

(III) escort services, which consist of accompanying and assisting an individual to access services or activities in the community, but do not include transporting an individual; and

(IV) assistance with health-related tasks; and

(ii) habilitation that provides assistance to an individual in acquiring, retaining, and improving self-help, socialization, and daily living skills and training the individual on ADLs, IADLs, and health-related tasks, such as:

(I) self-care;

(II) personal hygiene;

(III) household tasks;

(IV) mobility;

(V) money management;

(VI) community integration, including how to get around in the community;

(VII) use of adaptive equipment;

(VIII) personal decision making;

(IX) reduction of challenging behaviors to allow individuals to accomplish ADLs, IADLs, and health-related tasks; and

(X) self-administration of medication; and

(B) does not include transporting the individual, which means driving the individual from one location to another.

(14) CFC support consultation--The term used for support consultation on the IPC of an applicant or individual if the applicant or individual receives only CFC PAS/HAB through the CDS option.

(15) CFC support management--Training regarding how to select, manage, and dismiss an unlicensed service provider of CFC PAS/HAB, as described in the HCS Handbook.

(16) CMS--Centers for Medicare and Medicaid Services. The federal agency within the United States Department of Health and Human Services that administers the Medicare and Medicaid programs.

(17) Cognitive rehabilitation therapy--A service that:

(A) assists an individual in learning or relearning cognitive skills that have been lost or altered as a result of damage to brain cells or brain chemistry in order to enable the individual to compensate for lost cognitive functions; and

(B) includes reinforcing, strengthening, or reestablishing previously learned patterns of behavior, or establishing new patterns of cognitive activity or compensatory mechanisms for impaired neurological systems.

(18) Competitive employment--Employment that pays an individual at least minimum wage if the individual is not self-employed.

(19) Condition of a serious nature--Except as provided in paragraph (34) of this section, a condition in which a program provider's noncompliance with a certification principle caused or could cause physical, emotional, or financial harm to one or more of the individuals receiving services from the program provider.

(20) Contract--A provisional contract or a standard contract.

(21) CRCG--Community resource coordination group. A local interagency group composed of public and private agencies that develops service plans for individuals whose needs can be met only through interagency coordination and cooperation. The group's role and responsibilities are described in the Memorandum of Understanding on Coordinated Services to Persons Needing Services from More Than One Agency, available on the HHSC website at www.hhsc.state.tx.us.

(22) Critical incident--An event listed in the HCS Provider User Guide found at www.dads.state.tx.us

(23) DADS--The Department of Aging and Disability Services.

(24) DARS--The Department of Assistive and Rehabilitative Services.

(25) DFPS--The Department of Family and Protective Services.

(26) Emergency--An unexpected situation in which the absence of an immediate response could reasonably be expected to result in risk to the health and safety of an individual or another person.

(27) Emergency situation--An unexpected situation involving an individual's health, safety, or welfare, of which a person of ordinary prudence would determine that the LAR should be informed, such as:

(A) an individual needing emergency medical care;

(B) an individual being removed from his residence by law enforcement;

(C) an individual leaving his residence without notifying a staff member or service provider and not being located; and

(D) an individual being moved from his residence to protect the individual (for example, because of a hurricane, fire, or flood).

(28) Family-based alternative--A family setting in which the family provider or providers are specially trained to provide support and in-home care for children with disabilities or children who are medically fragile.

(29) FMS--Financial management services. A service, as defined in §41.103 of this title, that is provided to an individual participating in the CDS option.

(30) FMSA--Financial management services agency. As defined in §41.103 of this title, an entity that provides financial management services to an individual participating in the CDS option.

(31) Former military member--A person who served in the United States Army, Navy, Air Force, Marine Corps, or Coast Guard:

(A) who declared and maintained Texas as the person's state of legal residence in the manner provided by the applicable military branch while on active duty; and

(B) who was killed in action or died while in service, or whose active duty otherwise ended.

(32) Four-person residence--A residence:

(A) that a program provider leases or owns;

(B) in which at least one person but no more than four persons receive:

(i) residential support;

(ii) supervised living;

(iii) a non-HCS Program service similar to residential support or supervised living (for example, services funded by DFPS or by a person's own resources); or

(iv) respite;

(C) that, if it is the residence of four persons, at least one of those persons receives residential support;

(D) that is not the residence of any persons other than a service provider, the service provider's spouse or person with whom the service provider has a spousal relationship, or a person described in subparagraph (B) of this paragraph; and

(E) that is not a dwelling described in §9.155(a)(5)(H) of this subchapter (relating to Eligibility Criteria and Suspension of HCS Program Services and of CFC Services).

(33) Good cause--As used in §9.174(j) of this subchapter, a reason outside the control of the CFC ERS provider, as determined by DADS.

(34) GRO--General Residential Operation. As defined in Texas Human Resources Code, §42.002, a child-care facility that provides care for more than 12 children for 24 hours a day, including facilities known as children's homes, halfway houses, residential treatment centers, emergency shelters, and therapeutic camps.

(35) Hazard to health or safety--A condition in which serious injury or death of an individual or other person is imminent because of a program provider's noncompliance with a certification principle.

(36) HCS Program--The Home and Community-based Services Program operated by DADS as authorized by CMS in accordance with §1915(c) of the Social Security Act.

(37) Health-related tasks--Specific tasks related to the needs of an individual, which can be delegated or assigned by licensed health care professionals under state law to be performed by a service provider of CFC PAS/HAB. These include tasks delegated by an RN; health maintenance activities as defined in 22 TAC §225.4 (relating to Definitions), that may not require delegation; and activities assigned to a service provider of CFC PAS/HAB by a licensed physical therapist, occupational therapist, or speech-language pathologist.

(38) HHSC--Health and Human Services Commission.

(39) IADLs--Instrumental activities of daily living. Activities related to living independently in the community, including meal planning and preparation; managing finances; shopping for food, clothing, and other essential items; performing essential household chores; communicating by phone or other media; and traveling around and participating in the community.

(40) ICAP--Inventory for Client and Agency Planning.

(41) ICF/IID--Intermediate care facility for individuals with an intellectual disability or related conditions. An ICF/IID is a facility in which ICF/IID Program services are provided and that is:

(A) licensed in accordance with THSC, Chapter 252; or

(B) certified by DADS, including a state supported living center.

(42) ICF/IID Program--The Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions Program, which provides Medicaid-funded residential services to individuals with an intellectual disability or related conditions.

(43) ID/RC Assessment--Intellectual Disability/Related Conditions Assessment. A form used by DADS for LOC determination and LON assignment.

(44) Implementation Plan--A written document developed by the program provider that, for each HCS Program service, except for transportation provided as a supported home living activity, and CFC service, except for CFC support management, on the individual's IPC to be provided by the program provider, includes:

(A) a list of outcomes identified in the PDP that will be addressed using HCS Program services and CFC services;

(B) specific objectives to address the outcomes required by subparagraph (A) of this paragraph that are:

(i) observable, measurable, and outcome-oriented; and

(ii) derived from assessments of the individual's strengths, personal goals, and needs;

(C) a target date for completion of each objective;

(D) the number of units of HCS Program services and CFC services needed to complete each objective;

(E) the frequency and duration of HCS Program services and CFC services needed to complete each objective; and

(F) the signature and date of the individual, LAR, and the program provider.

(45) Individual--A person enrolled in the HCS Program.

(46) Initial IPC--The first IPC for an individual developed before the individual's enrollment into the HCS Program.

(47) Intellectual disability--Significant sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(48) IPC--Individual plan of care. A written plan that:

(A) states:

(i) the type and amount of each HCS Program service and each CFC service, except for CFC support management, to be provided to the individual during an IPC year;

(ii) the services and supports to be provided to the individual through resources other than HCS Program services or CFC services, including natural supports, medical services, and educational services; and

(iii) if an individual will receive CFC support management; and

(B) is authorized by DADS.

(49) IPC cost--Estimated annual cost of HCS Program services included on an IPC.

(50) IPC year--A 12-month period of time starting on the date an initial or renewal IPC begins. A revised IPC does not change the begin or end date of an IPC year.

(51) LAR--Legally authorized representative. A person authorized by law to act on behalf of a person with regard to a matter described in this subchapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(52) LIDDA--Local intellectual and developmental disability authority. An entity designated by the executive commissioner of HHSC, in accordance with THSC, §533A.035.

(53) LOC--Level of care. A determination given to an individual as part of the eligibility determination process based on data submitted on the ID/RC Assessment.

(54) LON--Level of need. An assignment given by DADS to an individual upon which reimbursement for host home/companion care, supervised living, residential support, and day habilitation is based.

(55) LVN--Licensed vocational nurse. A person licensed to practice vocational nursing in accordance with Texas Occupations Code, Chapter 301.

(56) Managed care organization--This term has the meaning set forth in Texas Government Code, §536.001.

(57) MAO Medicaid--Medical Assistance Only Medicaid. A type of Medicaid by which an applicant or individual qualifies financially for Medicaid assistance but does not receive SSI benefits.

(58) Microboard--A program provider:

(A) that is a non-profit corporation:

(i) that is created and operated by no more than 10 persons, including an individual;

(ii) the purpose of which is to address the needs of the individual and directly manage the provision of HCS Program services or CFC services; and

(iii) in which each person operating the corporation participates in addressing the needs of the individual and directly managing the provision of HCS Program services or CFC services; and

(B) that has a service capacity designated in the DADS data system of no more than three individuals.

(59) Military member--A member of the United States military serving in the Army, Navy, Air Force, Marine Corps, or Coast Guard on active duty who has declared and maintains Texas as the member's state of legal residence in the manner provided by the applicable military branch.

(60) Military family member--A person who is the spouse or child (regardless of age) of:

(A) a military member; or

(B) a former military member.

(61) Natural supports--Unpaid persons, including family members, volunteers, neighbors, and friends, who assist and sustain an individual.

(62) Nursing facility--A facility licensed in accordance with THSC, Chapter 242.

(63) PDP (person-directed plan)--A written plan, based on person-directed planning and developed with an applicant or individual in accordance with the DADS Person-Directed Plan form and discovery tool found at www.dads.state.tx.us, that describes the supports and services necessary to achieve the desired outcomes identified by the applicant or individual (and LAR on the applicant's or individual's behalf) and ensure the applicant's or individual's health and safety.

(64) Performance contract--A written agreement between DADS and a LIDDA for the performance of delegated functions, including those described in THSC, §533A.035.

(65) Permanency planning--A philosophy and planning process that focuses on the outcome of family support for an applicant or individual under 22 years of age by facilitating a permanent living arrangement in which the primary feature is an enduring and nurturing parental relationship.

(66) Permanency Planning Review Screen--A screen in the DADS data system, completed by a LIDDA, that identifies community supports needed to achieve an applicant's or individual's permanency planning outcomes and provides information necessary for approval to provide supervised living or residential support to the applicant or individual.

(67) Person-directed planning--An ongoing process that empowers the applicant or individual (and the LAR on the applicant's or individual's behalf) to direct the development of a PDP. The process:

(A) identifies supports and services necessary to achieve the applicant's or individual's outcomes;

(B) identifies existing supports, including natural supports and other supports available to the applicant or individual and negotiates needed services system supports;

(C) occurs with the support of a group of people chosen by the applicant or individual (and the LAR on the applicant's or individual's behalf); and

(D) accommodates the applicant's or individual's style of interaction and preferences.

(68) Post-move monitoring visit--As described in §17.503 of this title, (relating to Transition Planning for a Designated Resident), a visit conducted by the service coordinator in the individual's residence and other locations, as determined by the service planning team, for an individual who enrolled in the HCS Program from a nursing facility or enrolled in the HCS Program as a diversion from admission to a nursing facility. The purpose of the visit is to review the individual's residence and other locations to:

(A) assess whether essential supports identified in the transition plan are in place;

(B) identify gaps in care; and

(C) address such gaps, if any, to reduce the risk of crisis, re-admission to a nursing facility, or other negative outcome.

(69) Pre-enrollment minor home modifications--Minor home modifications, as described in the *HCS Program Billing Guidelines,* completed before an applicant is discharged from a nursing facility, an ICF/IID, or a GRO and before the effective date of the applicant's enrollment in the HCS Program.

(70) Pre-enrollment minor home modifications assessment--An assessment performed by a licensed professional as required by the *HCS Program Billing Guidelines* to determine the need for pre-enrollment minor home modifications.

(71) Pre-move site review--As described in §17.503 of this title, a review conducted by the service coordinator in the planned residence and other locations, as determined by the service planning team, for an applicant transitioning from a nursing facility to the HCS Program. The purpose of the review is to ensure that essential services and supports described in the applicant's transition plan are in place before the applicant moves to the residence or receives services in the other locations.

(72) Program provider--A person, as defined in §49.102 of this title (relating to Definitions), that has a contract with DADS to provide HCS Program services, excluding an FMSA.

(73) Provisional contract--An initial contract that DADS enters into with a program provider in accordance with §49.208 of this title (relating to Provisional Contract Application Approval) that has a stated expiration date.

(74) Public emergency personnel--Personnel of a sheriff's department, police department, emergency medical service, or fire department.

(75) Related condition--A severe and chronic disability that:

(A) is attributed to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, other than mental illness, found to be closely related to an intellectual disability because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of individuals with an intellectual disability, and requires treatment or services similar to those required for individuals with an intellectual disability;

(B) is manifested before the individual reaches age 22;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in at least three of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

(76) Relative--A person related to another person within the fourth degree of consanguinity or within the second degree of affinity. A more detailed explanation of this term is included in the *HCS Program Billing Guidelines.*

(77) Renewal IPC--An IPC developed for an individual in accordance with §9.166(a) of this subchapter (relating to Renewal and Revision of an IPC).

(78) Responder--A person designated to respond to an alarm call activated by an individual.

(79) Restraint--

(A) A manual method, except for physical guidance or prompting of brief duration, or a mechanical device to restrict:

(i) the free movement or normal functioning of all or a portion of an individual's body; or

(ii) normal access by an individual to a portion of the individual's body.

(B) Physical guidance or prompting of brief duration becomes a restraint if the individual resists the physical guidance or prompting.

(80) RN--Registered nurse. A person licensed to practice professional nursing in accordance with Texas Occupations Code, Chapter 301.

(81) Revised IPC--An initial IPC or a renewal IPC that is revised during an IPC year in accordance with §9.166(b) or (d) of this subchapter to add a new HCS Program service or CFC service or change the amount of an existing service.

(82) Seclusion--The involuntary separation of an individual away from other individuals and the placement of the individual alone in an area from which the individual is prevented from leaving.

(83) Service backup plan--A plan that ensures continuity of critical program services if service delivery is interrupted.

(84) Service coordination--A service as defined in Chapter 2, Subchapter L of this title (relating to Service Coordination for Individuals with an Intellectual Disability).

(85) Service coordinator--An employee of a LIDDA who provides service coordination to an individual.

(86) Service planning team--One of the following:

(A) for an applicant or individual other than one described in subparagraphs (B) or (C) of this paragraph, a planning team consisting of:

(i) an applicant or individual and LAR;

(ii) service coordinator; and

(iii) other persons chosen by the applicant or individual or LAR, for example, a staff member of the program provider, a family member, a friend, or a teacher;

(B) for an applicant 21 years of age or older who is residing in a nursing facility and enrolling in the HCS Program, a planning team consisting of:

(i) the applicant and LAR;

(ii) service coordinator;

(iii) a staff member of the program provider;

(iv) providers of specialized services;

(v) a nursing facility staff person who is familiar with the applicant's needs;

(vi) other persons chosen by the applicant or LAR, for example, a family member, a friend, or a teacher; and

(vii) at the discretion of the LIDDA, other persons who are directly involved in the delivery of services to persons with an intellectual or developmental disability; or

(C) for an individual 21 years of age or older who has enrolled in the HCS Program from a nursing facility or has enrolled in the HCS Program as a diversion from admission to a nursing facility, for 365 calendar days after enrollment, a planning team consisting of:

(i) the individual and LAR;

(ii) service coordinator;

(iii) a staff member of the program provider;

(iv) other persons chosen by the individual or LAR, for example, a family member, a friend, or a teacher; and

(v) with the approval of the individual or LAR, other persons who are directly involved in the delivery of services to persons with an intellectual or developmental disability.

(87) Service provider--A person, who may be a staff member, who directly provides an HCS Program service or CFC service to an individual.

(88) Specialized services--Services defined in §17.102 of this title (relating to Definitions).

(89) SSI--Supplemental Security Income.

(90) Staff member--An employee or contractor of an HCS Program provider.

(91) Standard contract--A contract that DADS enters into with a program provider in accordance with §49.209 of this title (relating to Standard Contract) that does not have a stated expiration date.

(92) State Medicaid claims administrator--The entity contracting with the state as the Medicaid claims administrator and fiscal agent.

(93) State supported living center--A state-supported and structured residential facility operated by DADS to provide to persons with an intellectual disability a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills, but does not include a community-based facility owned by DADS.

(94) Support consultation--A service, as defined in §41.103 of this title, that is provided to an individual participating in the CDS option at the request of the individual or LAR.

(95) System check--A test of the CFC ERS equipment to determine if:

(A) the individual can successfully activate an alarm call; and

(B) the equipment is working properly.

(96) TANF--Temporary Assistance for Needy Families.

(97) TAS--Transition assistance services. Services provided to assist an applicant in setting up a household in the community before being discharged from a nursing facility, an ICF/IID, or a GRO and before enrolling in the HCS Program. TAS consists of:

(A) for an applicant whose proposed initial IPC does not include residential support, supervised living, or host home/companion care:

(i) paying security deposits required to lease a home, including an apartment, or to establish utility services for a home;

(ii) purchasing essential furnishings for a home, including a table, a bed, chairs, window blinds, eating utensils, and food preparation items;

(iii) paying for expenses required to move personal items, including furniture and clothing, into a home;

(iv) paying for services to ensure the health and safety of the applicant in a home, including pest eradication, allergen control, or a one-time cleaning before occupancy; and

(v) purchasing essential supplies for a home, including toilet paper, towels, and bed linens; and

(B) for an applicant whose initial proposed IPC includes residential support, supervised living, or host home/companion care:

(i) purchasing bedroom furniture;

(ii) purchasing personal linens for the bedroom and bathroom; and

(iii) paying for allergen control.

(98) Three-person residence--A residence:

(A) that a program provider leases or owns;

(B) in which at least one person but no more than three persons receive:

(i) residential support;

(ii) supervised living;

(iii) a non-HCS Program service similar to residential support or supervised living (for example, services funded by DFPS or by a person's own resources);or

(iv) respite;

(C) that is not the residence of any person other than a service provider, the service provider's spouse or person with whom the service provider has a spousal relationship, or a person described in subparagraph (B) of this paragraph; and

(D) that is not a dwelling described in §9.155(a)(5)(H) of this subchapter.

(99) THSC--Texas Health and Safety Code. Texas statutes relating to health and safety.

(100) Transition plan--As described in §17.503 of this title, a written plan developed by the service planning team for an applicant who is residing in a nursing facility and enrolling in the HCS Program. A transition plan includes the essential and nonessential services and supports the applicant needs to transition from a nursing facility to a community setting.

(101) Transportation plan--A written plan, based on person-directed planning and developed with an applicant or individual using DADS Individual Transportation Plan form found at www.dads.state.tx.us. A transportation plan is used to document how transportation as a supported home living activity will be delivered to support an individual's desired outcomes and purposes for transportation as identified in the PDP.

(102) Vendor hold--A temporary suspension of payments that are due to a program provider under a contract.

§9.155. Eligibility Criteria and Suspension of HCS Program Services and of CFC Services.

(a) An applicant or individual is eligible for HCS Program services if he or she:

(1) meets the financial eligibility criteria as described in Appendix B of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us;

(2) meets one of the following criteria:

(A) based on a determination of an intellectual disability performed in accordance with THSC, Chapter 593, Subchapter A and as determined by DADS in accordance with §9.161 of this subchapter (relating to LOC Determination), qualifies for an ICF/IID LOC I as defined in §9.238 of this chapter (relating to ICF/MR Level of Care I Criteria);

(B) as determined by DADS in accordance with §9.161 of this subchapter, qualifies for an ICF/IID LOC I as defined in §9.238 of this chapter or ICF/IID LOC VIII as defined in §9.239 of this chapter (relating to ICF/MR Level of Care VIII Criteria), and has been determined by DADS:

(i) to have an intellectual disability or a related condition;

(ii) to need specialized services; and

(iii) to be inappropriately placed in a Medicaid certified nursing facility based on an annual resident review conducted in accordance with the requirements of Chapter 17 of this title (relating to Preadmission Screening and Resident Review (PASRR)); or

(C) meets the following criteria:

(i) based on a determination of an intellectual disability performed in accordance with THSC, Chapter 593, Subchapter A and as determined by DADS in accordance with §9.161 of this subchapter, qualifies for one of the following levels of care:

(I) an ICF/IID LOC I as defined in §9.238 of this chapter; or

(II) an ICF/IID LOC VIII as defined in §9.239 of this chapter;

(ii) meets one of the following:

(I) resides in a nursing facility immediately prior to enrolling in the HCS Program; or

(II) is at imminent risk of entering a nursing facility as determined by DADS; and

(iii) is offered HCS Program services designated for a member of the reserved capacity group "Individuals with a level of care I or VIII residing in a nursing facility" included in Appendix B of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us;

(3) has an IPC cost that does not exceed:

(A) $167,468 for an applicant or individual with an LON 1, LON 5, or LON 8;

(B) $168,615 for an applicant or individual with an LON 6; or

(C) $305,877 for an applicant or individual with an LON 9;

(4) is not enrolled in another waiver program and is not receiving a service that may not be received if the individual is enrolled in the HCS Program as identified in the Mutually Exclusive Services table in Appendix II of the HCS Handbook available at www.dads.state.tx.us;

(5) does not reside in:

(A) an ICF/IID;

(B) a nursing facility;

(C) an assisted living facility licensed or subject to being licensed in accordance with THSC, Chapter 247;

(D) a residential child-care operation licensed or subject to being licensed by DFPS unless it is a foster family home or a foster group home;

(E) a facility licensed or subject to being licensed by the Department of State Health Services (DSHS);

(F) a facility operated by DARS;

(G) a residential facility operated by the Texas Juvenile Justice Department, a jail, or a prison; or

(H) a setting in which two or more dwellings, including units in a duplex or apartment complex, single family homes, or facilities listed in subparagraphs (A) - (G) of this paragraph, excluding supportive housing under Section 811 of the National Affordable Housing Act of 1990, meet all of the following criteria:

(i) the dwellings create a residential area distinguishable from other areas primarily occupied by persons who do not require routine support services because of a disability;

(ii) most of the residents of the dwellings are persons with an intellectual disability; and

(iii) the residents of the dwellings are provided routine support services through personnel, equipment, or service facilities shared with the residents of the other dwellings; and

(6) requires the provision of:

(A) at least one HCS Program service per month or a monthly monitoring visit by a service coordinator as described in §9.190(e)(41) of this subchapter (relating to LIDDA Requirements for Providing Service Coordination in the HCS Program); and

(B) at least one HCS Program service per IPC year.

(b) For applicants or individuals with spouses who live in the community, the income and resource eligibility requirements are determined according to the spousal impoverishment provisions in §1924 of the Social Security Act and as specified in the Medicaid State Plan.

(c) Except as provided in subsection (d), an applicant or individual is eligible for a CFC service under this subchapter if the applicant or individual:

(1) meets the criteria described in subsection (a) of this section;

(2) requires the provision of the CFC service; and

(3) is not receiving host home/companion care, supervised living, or residential support.

(d) To be eligible for a CFC service under this subchapter, an applicant or individual receiving MAO Medicaid must, in addition to meeting the eligibility criteria described in subsection (c) of this section, receive an HCS Program service at least monthly, as required by 42 CFR §441.510(d), which may not be met by a monthly monitoring

visit by a service coordinator as described in §9.190(e)(41) of this subchapter.

(e) If an individual is temporarily admitted to one of the following settings, the individual's HCS Program services and CFC services are suspended during that admission:

(1) a hospital;

(2) an ICF/IID;

(3) a nursing facility;

(4) a residential child-care operation licensed or subject to being licensed by DFPS;

(5) a facility licensed or subject to being licensed by the DSHS;

(6) a facility operated by DARS;

(7) a residential facility operated by the Texas Juvenile Justice Department, a jail, or a prison; or

(8) an assisted living facility licensed or subject to being licensed in accordance with THSC, Chapter 247.

§9.158. Process for Enrollment of Applicants.

(a) DADS notifies a LIDDA, in writing, of the availability of HCS Program services in the LIDDA's local service area and directs the LIDDA to offer HCS Program services to an applicant:

(1) whose interest list request date, assigned in accordance with §9.157(c)(2) and (d) of this subchapter (relating to HCS Interest List), is earliest on the statewide interest list for the HCS Program as maintained by DADS; or

(2) who is a member of a target group identified in the approved HCS waiver application.

(b) Except as provided in subsection (c) of this section, the LIDDA must make the offer of HCS Program services in writing and deliver it to the applicant or LAR by regular United States mail or by hand delivery.

(c) The LIDDA must make the offer of HCS Program services to an applicant described in subsection (a)(2) of this section in accordance with DADS procedures.

(d) The LIDDA must include in a written offer that is made in accordance with subsection (a)(1) of this section:

(1) a statement that:

(A) if the applicant or LAR does not respond to the offer of HCS Program services within 30 calendar days after the LIDDA's written offer, the LIDDA withdraws the offer; and

(B) if the applicant is currently receiving services from the LIDDA that are funded by general revenue and the applicant or LAR declines the offer of HCS Program services, the LIDDA terminates those services that are similar to services provided under the HCS Program; and

(2) information regarding the time frame requirements described in subsection (f) of this section using the Deadline Notification form, which is found at www.dads.state.tx.us.

(e) If an applicant or LAR responds to an offer of HCS Program services, the LIDDA must:

(1) provide the applicant, LAR, and, if the LAR is not a family member, at least one family member (if possible) both an oral and written explanation of the services and supports for which the applicant may be eligible, including the ICF/IID Program (both state supported living centers and community-based facilities), waiver programs under §1915(c) of the Social Security Act, and other community-based services and supports. The LIDDA must use the Explanation of Services and Supports document, which is found at www.dads.state.tx.us;

(2) using a DADS form, provide the applicant and LAR both an oral and a written explanation of all HCS Program services and CFC services; and

(3) give the applicant or LAR the Verification of Freedom of Choice Form, Waiver Program which is found at www.dads.state.tx.us, to document the applicant's choice regarding the HCS Program and ICF/IID Program.

(f) The LIDDA must withdraw an offer of HCS Program services made to an applicant or LAR if:

(1) within 30 calendar days after the LIDDA's offer made to the applicant or LAR in accordance with subsection (a)(1) of this section, the applicant or LAR does not respond to the offer of HCS Program services;

(2) within seven calendar days after the applicant or LAR receives the Verification of Freedom of Choice, Waiver Program form from the LIDDA in accordance with subsection (e)(3) of this section, the applicant or LAR does not document the choice of HCS Program services over the ICF/IID Program using the Verification of Freedom of Choice, Waiver Program form;

(3) within 30 calendar days after the applicant or LAR receives the contact information for all program providers in the LIDDA's local service area in accordance with subsection (j)(3) of this section, the applicant or LAR does not document the choice of a program provider using the Documentation of Provider Choice form; or

(4) the applicant or LAR does not complete the necessary activities to finalize the enrollment process and DADS has approved the withdrawal of the offer.

(g) If the LIDDA withdraws an offer of HCS Program services made to an applicant, the LIDDA must notify the applicant or LAR of such action, in writing, by certified United States mail.

(h) If the applicant is currently receiving services from the LIDDA that are funded by general revenue and the applicant declines the offer of HCS Program services, the LIDDA must terminate those services that are similar to services provided under the HCS Program.

(i) If the LIDDA terminates an applicant's services in accordance with subsection (h) of this section, the LIDDA must notify the applicant or LAR of the termination, in writing, by certified United States mail and provide an opportunity for a review in accordance with §2.46 of this title (relating to Notification and Appeals Process).

(j) If the applicant or LAR accepts the offer of HCS Program services, the LIDDA must compile and maintain information necessary to process the request for enrollment in the HCS Program.

(1) If the applicant's financial eligibility for the HCS Program must be established, the LIDDA must initiate, monitor, and support the processes necessary to obtain a financial eligibility determination.

(2) The LIDDA must complete an ID/RC Assessment in accordance with §9.161 and §9.163 of this subchapter (relating to LOC Determination and LON Assignment, respectively).

(A) The LIDDA must:

(i) perform or endorse a determination that the applicant has an intellectual disability in accordance with Chapter 5, Subchapter D of this title (relating to Diagnostic Eligibility for Services and Supports--Intellectual Disability Priority Population and Related Conditions); or

(ii) verify that the applicant has been diagnosed by a licensed physician as having a related condition as defined in §9.203 of this chapter (relating to Definitions).

(B) The LIDDA must administer the ICAP and recommend an LON assignment to DADS in accordance with §9.163 and §9.164 of this subchapter (relating to DADS Review of LON).

(C) The LIDDA must electronically transmit the completed ID/RC Assessment to DADS for approval in accordance with §9.161(a) and §9.163(a) of this subchapter and, if applicable, submit supporting documentation as required by §9.164(c) of this subchapter.

(3) The LIDDA must provide names and contact information to the applicant or LAR for all program providers in the LIDDA's local service area.

(4) The LIDDA must assign a service coordinator who, together with other members of the applicant's service planning team, must:

(A) develop a PDP;

(B) if CFC PAS/HAB is included on the PDP, complete DADS HCS/TxHmL CFC PAS/HAB Assessment form to determine the number of CFC PAS/HAB hours the applicant needs; and

(C) develop a proposed initial IPC in accordance with §9.159(c) of this subchapter (relating to IPC).

(5) A service coordinator must discuss the CDS option with the applicant or LAR in accordance with §9.168(a) and (b) of this subchapter (relating to CDS Option).

(k) The service coordinator must:

(1) arrange for meetings and visits with potential program providers as requested by the applicant or LAR;

(2) review the proposed initial IPC with potential program providers as requested by the applicant or LAR;

(3) ensure that the applicant's or LAR's choice of a program provider is documented on the Documentation of Provider Choice Form and signed by the applicant or LAR;

(4) negotiate and finalize the proposed initial IPC and the date services will begin with the selected program provider, consulting with DADS if necessary to reach agreement with the selected program provider on the content of the proposed initial IPC and the date services will begin;

(5) determine whether the applicant meets the following criteria:

(A) is being discharged from a nursing facility, an ICF/IID, or a GRO; and

(B) anticipates needing TAS;

(6) if the service coordinator determines that the applicant meets the criteria described in paragraph (5) of this subsection:

(A) complete, with the applicant or LAR and the selected program provider, DADS Transition Assistance Services (TAS) Assessment and Authorization form found at www.dads.state.tx.us in accordance with the form's instructions, which includes:

(i) identifying the TAS the applicant needs; and

(ii) estimating the monetary amount for each TAS identified, which must be within the service limit described in §9.192(a)(5) of this subchapter (relating to Service Limits);

(B) submit the completed form to DADS to determine if TAS is authorized;

(C) send the form authorized by DADS to the selected program provider; and

(D) include the TAS and the monetary amount authorized by DADS on the applicant's proposed initial IPC;

(7) determine whether an applicant meets the following criteria:

(A) is being discharged from a nursing facility, an ICF/IID, or a GRO;

(B) has not met the maximum service limit for minor home modifications as described in §9.192(a)(3)(A) of this subchapter; and

(C) anticipates needing pre-enrollment minor home modifications and a pre-enrollment minor home modifications assessment;

(8) if the service coordinator determines that an applicant meets the criteria described in paragraph (7) of this subsection:

(A) complete, with the applicant or LAR and selected program provider, DADS Home and Community-based Services (HCS) Program Pre-enrollment MHM Authorization Request form found at www.dads.state.tx.us in accordance with the form's instructions, which includes:

(i) identifying the pre-enrollment minor home modifications the applicant needs;

(ii) identifying the pre-enrollment minor home modifications assessments conducted by the program provider as required by §9.174(h)(1)(A) of this subchapter (relating to Certification Principles: Service Delivery);

(iii) based on documentation provided by the program provider as required by the *HCS Program Billing Guidelines,* stating the cost of:

(I) the pre-enrollment minor home modifications identified on the form, which must be within the service limit described in §9.192(a)(3)(A) of this subchapter; and

(II) the pre-enrollment minor home modifications assessments conducted;

(B) submit the completed form to DADS to determine if pre-enrollment minor home modification and pre-enrollment minor home modifications assessments are authorized;

(C) send the form authorized by DADS to the selected program provider; and

(D) include the pre-enrollment minor home modifications, pre-enrollment minor home modifications assessments, and the monetary amount for these services authorized by DADS on the applicant's proposed initial IPC;

(9) if an applicant or LAR chooses a program provider to deliver supported home living, nursing, host home/companion care, residential support, supervised living, respite, employment assistance, supported employment, day habilitation, or CFC PAS/HAB, ensure that the initial proposed IPC includes a sufficient number of RN nursing

units for a program provider nurse to perform an initial nursing assessment unless, as described in §9.174(c) of this subchapter:

(A) nursing services are not on the proposed IPC and the individual or LAR and selected program provider have determined that an unlicensed service provider will not perform a nursing task as documented on DADS form "Nursing Task Screening Tool"; or

(B) an unlicensed service provider will perform a nursing task and a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician;

(10) if an applicant or LAR refuses to include on the initial proposed IPC a sufficient number of RN nursing units to perform an initial nursing assessment as required by paragraph (9) of this subsection:

(A) inform the applicant or LAR that the refusal:

(i) will result in the applicant not receiving nursing services from the program provider; and

(ii) if the applicant needs host home/companion care, residential support, supervised living, supported home living, respite, employment assistance, supported employment, day habilitation, or CFC PAS/HAB from the program provider, will result in the individual not receiving that service unless, as described in §9.174(d)(2) of this subchapter:

(I) the program provider's unlicensed service provider does not perform nursing tasks in the provision of the service; and

(II) the program provider determines that it can ensure the applicant's health, safety, and welfare in the provision of the service; and

(B) document the refusal of the RN nursing units on the proposed IPC for an initial assessment by the program provider's RN in the applicant's record;

(11) ensure that the applicant or LAR signs and dates the proposed initial IPC;

(12) ensure that the selected program provider signs and dates the proposed IPC, demonstrating agreement that the services will be provided to the applicant;

(13) sign and date the proposed initial IPC, which indicates that the service coordinator agrees that the requirements described in §9.159(c) of this subchapter have been met;

(14) using a DADS form, provide an oral and written explanation to the applicant or LAR of:

(A) the eligibility requirements for HCS Program services as described in §9.155(a) of this subchapter (relating to Eligibility Criteria and Suspension of HCS Program Services and of CFC Services); and

(B) if the applicant's PDP includes CFC services:

(i) the eligibility requirements for CFC services as described in §9.155(c) of this subchapter to applicants who do not receive MAO Medicaid; and

(ii) the eligibility requirements for CFC services as described in §9.155(d) of this subchapter to applicants who receive MAO Medicaid; and

(15) inform the applicant or LAR, orally and in writing:

(A) that HCS Program services may be terminated if:

(i) the individual no longer meets the eligibility criteria described in §9.155(a) of this subchapter;

(ii) the individual or LAR requests termination of HCS Program services; and

(B) if the applicant's PDP includes CFC services, that CFC services may be terminated if:

(i) the individual no longer meets the eligibility criteria described in §9.155(c) or (d) of this subchapter; or

(ii) the individual or LAR requests termination of CFC services.

(l) A LIDDA must conduct permanency planning in accordance with §9.167(a) of this subchapter (relating to Permanency Planning).

(m) After the proposed initial IPC is finalized and signed in accordance with subsection (k) of this section, the LIDDA must:

(1) electronically transmit the proposed initial IPC to DADS and:

(A) keep the original proposed initial IPC in the individual's record; and

(B) ensure the electronically transmitted proposed initial IPC contains information identical to that on the original proposed initial IPC; and

(2) submit other required enrollment information to DADS.

(n) DADS notifies the applicant or LAR, the selected program provider, the FMSA, if applicable, and the LIDDA of its approval or denial of the applicant's enrollment. When the enrollment is approved, DADS authorizes the applicant's enrollment in the HCS Program through the DADS data system and issues an enrollment letter to the applicant that includes the effective date of the applicant's enrollment in the HCS Program.

(o) Prior to the applicant's service begin date, the LIDDA must provide to the selected program provider and FMSA, if applicable, copies of all enrollment documentation and associated supporting documentation, including relevant assessment results and recommendations, the completed ID/RC Assessment, the proposed initial IPC, and the applicant's PDP, and, if CFC PAS/HAB is included on the PDP, the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form.

(p) Except for the provision of TAS, pre-enrollment minor home modifications, and a pre-enrollment minor home modifications assessment, as required by §9.174(g) and (h) of this subchapter, the selected program provider must not initiate services until notified of DADS approval of the applicant's enrollment.

(q) The selected program provider must develop:

(1) an implementation plan for:

(A) HCS Program services, except for transportation as a supported home living activity, that is based on the individual's PDP and IPC; and

(B) CFC services, except for CFC support management, that is based on the individual's PDP, IPC, and if CFC PAS/HAB is included on the PDP, the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form; and

(2) a transportation plan, if transportation as a supported home living activity is included on the PDP.

(r) The LIDDA must retain in the applicant's record:

(1) the Verification of Freedom of Choice, Waiver Program form documenting the applicant's or LAR's choice of services;

(2) the Documentation of Provider Choice form documenting the applicant's or LAR's choice of a program provider, if applicable;

(3) the Deadline Notification form; and

(4) any other correspondence related to the offer of HCS Program services.

(s) Copies of the following forms referenced in this section are available at www.dads.state.tx.us:

(1) Verification of Freedom of Choice, Waiver Program form;

(2) Documentation of Provider Choice form;

(3) Deadline Notification form;

(4) Transition Assistance Services (TAS) Assessment and Authorization form; and

(5) Home and Community-based Services (HCS) Program Pre-enrollment MHM Authorization Request form.

§9.159. IPC.

(a) A service coordinator must initiate development of a proposed initial IPC for an applicant as required by §9.158(j)(4)(C) of this subchapter (relating to Process for Enrollment of Applicants).

(b) A program provider must initiate development of a proposed renewal and proposed revised IPC for an individual as required by §9.166 of this subchapter (relating to Renewal and Revision of an IPC).

(c) An IPC must be based on the PDP and specify the type and amount of each HCS Program service and CFC service to be provided to an individual, except for CFC support management, as well as non-HCS Program and non-CFC services and supports to be provided during the IPC year. The type and amount of each HCS Program service and CFC service in the IPC:

(1) must be necessary to protect the individual's health and welfare in the community;

(2) must not be available to the individual through any other source, including the Medicaid State Plan, other governmental programs, private insurance, or the individual's natural supports;

(3) must be the most appropriate type and amount to meet the individual's needs;

(4) must be cost effective;

(5) must be necessary to enable community integration and maximize independence;

(6) if an adaptive aid or minor home modification, must:

(A) be included on DADS approved list in the *HCS Program Billing Guidelines;* and

(B) be within the service limit described in §9.192 of this subchapter (relating to Service Limits);

(7) if an adaptive aid costing $500 or more, must be supported by a written assessment from a licensed professional specified by DADS in the *HCS Program Billing Guidelines;*

(8) if a minor home modification costing $1,000 or more, must be supported by a written assessment from a licensed professional specified by DADS in the *HCS Program Billing Guidelines;*

(9) if dental treatment, must be within the service limit described in §9.192 of this subchapter;

(10) if respite, must be within the service limit described in §9.192 of this subchapter;

(11) if TAS, must be:

(A) supported by a Transition Assistance Services (TAS) Assessment and Authorization form authorized by DADS; and

(B) within the service limit described in §9.192(a)(5)(A) or (B) of this subchapter;

(12) if pre-enrollment minor home modifications, must be:

(A) supported by a written assessment from a licensed professional if required by the *HCS Program Billing Guidelines;*

(B) supported by a Home and Community-based Services (HCS) Program Pre-enrollment MHM Authorization Request form authorized by DADS;

(C) within the service limit described in §9.192(a)(3)(A) of this subchapter;

(13) if a pre-enrollment minor home modifications assessment, must be supported by a Home and Community-based Services (HCS) Program Pre-enrollment MHM Authorization Request form authorized by DADS; and

(14) if CFC PAS/HAB, must be supported by the DADS HCS/TxHmL CFC PAS/HAB Assessment form.

(d) If an applicant's or individual's IPC includes only CFC PAS/HAB to be delivered through the CDS option, the service coordinator must include in the IPC:

(1) CFC FMS instead of FMS; and

(2) if the applicant or individual will receive support consultation, CFC support consultation instead of support consultation.

§9.166. Renewal and Revision of an IPC.

(a) Renewal of the IPC. At least annually and before the expiration of an individual's IPC, the individual's IPC must be renewed in accordance with this subsection and with DADS instructions.

(1) At least 60 but no more than 90 calendar days before the expiration of an individual's IPC, the service coordinator must:

(A) notify the service planning team that the individual's PDP must be reviewed and updated; and

(B) convene the service planning team to:

(i) review and update the individual's PDP; and

(ii) if CFC PAS/HAB is included on the PDP, complete DADS HCS/TxHmL CFC PAS/HAB Assessment form to determine the number of CFC PAS/HAB hours the individual needs.

(2) The service coordinator, within 10 calendar days after the PDP is updated, must send the program provider and FMSA, if applicable, a copy of:

(A) the updated PDP; and

(B) if CFC PAS/HAB is included on the PDP, a copy of the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form.

(3) The program provider must ensure that a meeting between the service planning team and the program provider occurs at least 30 but no more than 60 calendar days before the expiration of the individual's IPC to:

(A) review the PDP and, if CFC PAS/HAB is included on the PDP, the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form; and

(B) develop the proposed renewal IPC in accordance with §9.159(c) of this subchapter (relating to IPC), including completion of the CDS option portion of the proposed renewal IPC, if applicable, and the non-HCS Program services and non-CFC services.

(4) The program provider must develop, before the effective date of the proposed renewal IPC:

(A) an implementation plan for:

(i) HCS Program services, except for transportation as a supported home living activity, that is based on the individual's PDP and proposed renewal IPC; and

(ii) CFC services, except for CFC support management, that is based on the individual's PDP, and proposed renewal IPC, and if CFC PAS/HAB is included on the PDP, the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form; and

(B) a transportation plan, if transportation as a supported home living activity is included on the PDP.

(5) Within seven calendar days after development of the proposed renewal IPC as required by paragraph (3) of this subsection, the program provider must comply with the requirements in subsection (e)(1) and (2) of this section.

(6) Within seven calendar days after the program provider electronically transmits the proposed renewal IPC to DADS as required by subsection (e)(2) of this section, the service coordinator must comply with the requirements in subsection (e)(3) of this section.

(7) The program provider must provide HCS Program services and CFC services in accordance with:

(A) an implementation plan that is based on:

(i) the individual's PDP;

(ii) the renewal IPC; and

(iii) if CFC PAS/HAB is included on the PDP, the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form; and

(B) a transportation plan, if transportation as a supported home living activity is included on the PDP.

(b) Revisions to the IPC. Except as provided in subsection (f) of this section, the service coordinator or the program provider may determine whether an individual's IPC needs to be revised to add a new HCS Program service or CFC service or change the amount of an existing service.

(1) The service coordinator must notify the program provider if the service coordinator determines that the IPC needs to be revised.

(2) The program provider must notify the service coordinator if the program provider determines that the IPC needs to be revised.

(3) Within 14 calendar days after the notification required by paragraph (1) or (2) of this subsection:

(A) if the IPC needs to be revised to add CFC PAS/HAB or change the amount of CFC PAS/HAB:

(i) the service planning team must complete DADS HCS/TxHmL CFC PAS/HAB Assessment form to determine the number of CFC PAS/HAB hours the individual needs; and

(ii) the service coordinator must send a copy of the completed form to the program provider for review;

(B) the service planning team and the program provider must develop a proposed revised IPC;

(C) the service planning team must revise the PDP, if appropriate, and if the PDP is not revised, the service coordinator must document the reasons for the proposed IPC revision;

(D) the program provider must revise:

(i) the implementation plan for:

(I) HCS Program services, except for transportation as a supported home living activity, that is based on the individual's PDP and proposed revised IPC; and

(II) CFC services, except for CFC support management, that is based on the individual's PDP, proposed revised IPC, and if CFC PAS/HAB is included on the PDP, the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form; and

(ii) the transportation plan, if transportation as a supported home living activity is modified on the PDP or IPC; and

(E) the program provider must comply with the requirements in subsection (e)(1) and (2) of this section.

(4) Within seven calendar days after the program provider electronically transmits the proposed revised IPC to DADS as required by subsection (e)(2) of this section, the service coordinator must comply with the requirements in subsection (e)(3) of this section.

(5) The program provider must provide HCS Program services and CFC services in accordance with:

(A) an implementation plan that is based on:

(i) the individual's PDP;

(ii) the revised IPC; and

(iii) if CFC PAS/HAB is included on the PDP, the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form; and

(B) the revised transportation plan, if revised in accordance with paragraph (3)(C)(ii) of this subsection.

(c) Revision of IPC before delivery of services. Except as provided by subsection (d) of this section, if an individual's service planning team and program provider determine that the IPC must be revised to add a new HCS Program service or CFC service or change the amount of an existing service, the program provider must revise the IPC in accordance with subsection (b) of this section before the delivery of a new or increased service.

(d) Emergency provision of services and revision of the IPC.

(1) If an emergency necessitates the provision of an HCS Program service or CFC service to ensure the individual's health and safety and the service is not on the IPC or exceeds the amount on the IPC, the program provider may provide the service before revising the IPC. The program provider must, within one business day after providing the service:

(A) document:

(i) the circumstances that necessitated providing the new HCS Program service or CFC service or the increase in the amount of the existing HCS Program service or CFC service; and

(ii) the type and amount of the service provided;

(B) notify the service coordinator of the emergency provision of the service and that the IPC must be revised; and

(C) upon request, provide a copy of the documentation required by subparagraph (A) of this paragraph to the service coordinator.

(2) Within seven calendar days after providing the service:

(A) the service planning team and the program provider must develop a proposed revised IPC;

(B) the service planning team must revise the PDP, if appropriate;

(C) the program provider must:

(i) revise the implementation plan that is based on the individual's PDP and proposed revised IPC; and

(ii) develop or revise a transportation plan, if transportation as a supported home living activity is added to or modified on the PDP or IPC; and

(D) the program provider must comply with the requirements in subsection (e)(1) and (2) of this section.

(3) Within seven calendar days after the program provider electronically transmits the proposed revised IPC to DADS as required by subsection (e)(2) of this section, the service coordinator must comply with the requirements in subsection (e)(3) of this section.

(4) The program provider must provide HCS Program services and CFC services in accordance with:

(A) an implementation plan that is based on the individual's PDP and the revised IPC; and

(B) the transportation plan developed or revised in accordance with paragraph (2)(C)(ii) of this subsection.

(e) Submitting a proposed renewal and revised IPC to DADS. A proposed renewal or revised IPC must be submitted to DADS for authorization in accordance with this subsection.

(1) The program provider must:

(A) sign and date the proposed renewal or revised IPC demonstrating agreement that the services will be provided to the individual; and

(B) ensure that a proposed renewal or revised IPC is signed and dated by the individual or LAR.

(2) The program provider must:

(A) electronically transmit a proposed renewal or revised IPC to DADS;

(B) keep the original proposed renewal or revised IPC in the individual's record and, within three calendar days after electronic transmission, ensure the service coordinator receives a copy of the signed proposed renewal or revised IPC; and

(C) ensure the electronically transmitted proposed renewal or revised IPC contains information identical to that on the original proposed renewal or revised IPC.

(3) The service coordinator must review the electronically transmitted proposed renewal or revised IPC and:

(A) enter the service coordinator's name and date in the DADS data system;

(B) enter in the DADS data system whether the service coordinator agrees or disagrees that the requirements described in §9.159(c) of this subchapter have been met; and

(C) if the service coordinator disagrees that the requirements described in §9.159(c) of this subchapter have been met, notify the individual or LAR, the program provider, and DADS of the service coordinator's disagreement in accordance with DADS instructions.

(f) Revision of IPC to include CFC support management. If an individual or LAR requests CFC support management during an IPC year, the service coordinator or the program provider must revise the IPC as described in the HCS Handbook available at www.dads.state.tx.us.

(g) Renewal and revision of IPC when all services are through the CDS option. For an individual who is receiving all services through the CDS option and, therefore, does not have a program provider, the service coordinator must perform the functions of the program provider described in this section.

§9.168. CDS Option.

(a) If supported home living, respite, nursing, employment assistance, supported employment, cognitive rehabilitation therapy, or CFC PAS/HAB is included in an applicant's PDP, and the applicant's PDP does not include residential support, supervised living, or host home/companion care, the service coordinator must:

(1) inform the applicant or LAR of the applicant's right to participate in the CDS option or discontinue participation in the CDS option at any time, except as provided in §41.405(a) of this title (relating to Suspension of Participation in the CDS Option);

(2) inform the applicant or LAR that the applicant or LAR may choose to have supported home living, respite, nursing, employment assistance, supported employment, cognitive rehabilitation therapy, or CFC PAS/HAB provided through the CDS option;

(3) provide the applicant or LAR a copy of the Consumer Directed Services Option Overview, Consumer Directed Services Responsibilities, and Employee Qualification Requirements forms, which are found at www.dads.state.tx.us and which contain information about the CDS option, including a description of FMS and support consultation;

(4) provide an oral explanation of the information contained in the Consumer Directed Services Option Overview, Consumer Directed Services Responsibilities, and Employee Qualification Requirements forms to the applicant or LAR; and

(5) provide the applicant or LAR the opportunity to choose to participate in the CDS option and document the applicant's or LAR's choice on the Consumer Participation Choice form, which is found at www.dads.state.tx.us.

(b) If an applicant or LAR chooses to participate in the CDS option, the service coordinator must:

(1) provide names and contact information to the applicant or LAR regarding all FMSAs providing services in the LIDDA's local service area;

(2) document the applicant's or LAR's choice of FMSA on the Consumer Participation Choice form;

(3) document, in the individual's PDP, a description of the service provided through the CDS option; and

(4) document, in the individual's PDP, a description of the individual's service backup plan, if a backup plan is required by Chapter 41 of this title (relating to Consumer Directed Services Option).

(c) For an individual who is receiving supported home living, respite, nursing, employment assistance, supported employment, cognitive rehabilitation therapy, or CFC PAS/HAB, and is not receiving residential support, supervised living, or host home/companion care, the service coordinator must, at least annually:

(1) inform the individual or LAR of the individual's right to participate in the CDS option or discontinue participation in the CDS option at any time, except as provided in §41.405(a) of this title;

(2) provide the individual or LAR a copy of the Consumer Directed Services Option Overview, Consumer Directed Services Responsibilities, and Employee Qualification Requirements forms, which are found at www.dads.state.tx.us and which contain information about the CDS option, including FMS and support consultation;

(3) provide an oral explanation of the information contained in the Consumer Directed Services Option Overview, Consumer Directed Services Responsibilities and Employee Qualification Requirements forms to the individual or LAR; and

(4) provide the individual or LAR the opportunity to choose to participate in the CDS option and document the individual's choice on the Consumer Participation Choice form, which is found at www.dads.state.tx.us.

(d) If an individual or LAR chooses to participate in the CDS option, the service coordinator must:

(1) provide names and contact information to the individual or LAR regarding all FMSAs providing services in the LIDDA's local service area;

(2) document the individual's or LAR's choice of FMSA on the Consumer Participation Choice form;

(3) document, in the individual's PDP, a description of the service provided through the CDS option;

(4) document, in the individual's PDP, a description of the individual's service backup plan, if a backup plan is required by Chapter 41 of this title; and

(5) notify the program provider of the individual's or LAR's decision to participate in the CDS option.

(e) The service coordinator must document in the individual's PDP that the information described in subsections (c) and (d)(1) of this section was provided to the individual or LAR.

(f) If an individual's PDP includes transportation as a supported home living activity to be delivered through the CDS option, the service planning team must develop a transportation plan.

(g) For an individual participating in the CDS option, the service coordinator must recommend that DADS terminate the individual's participation in the CDS option (that is, terminate FMS and support consultation) if the service coordinator determines that:

(1) the individual's continued participation in the CDS option poses a significant risk to the individual's health or safety; or

(2) the individual or LAR has not complied with Chapter 41, Subchapter B of this title (relating to Responsibilities of Employers and Designated Representatives).

(h) If the service coordinator makes a recommendation in accordance with subsection (g) of this section, the service coordinator must:

(1) document:

(A) a description of the service recommended for termination;

(B) the reasons why termination is recommended;

(C) a description of the attempts to resolve the issues before recommending termination;

(2) obtain other supporting documentation, as appropriate; and

(3) notify the program provider that the IPC needs to be revised.

(i) Within seven calendar days after notification in accordance with subsection (h)(3) of this section:

(1) the service coordinator and the program provider must comply with the requirements described in §9.166(d)(2)(A) - (D) of this subchapter (relating to Renewal and Revision of an IPC); and

(2) the service coordinator must send the documentation described in subsection (h)(1) of this section to DADS.

§9.170. Reimbursement.

Program provider reimbursement.

(1) A program provider is paid for services as described in this paragraph.

(A) DADS pays for supported home living, professional therapies, nursing, respite, employment assistance, supported employment, and CFC PAS/HAB in accordance with the reimbursement rate for the specific service.

(B) DADS pays for host home/companion care, residential support, supervised living, and day habilitation in accordance with the individual's LON and the reimbursement rate for the specific service.

(C) DADS pays for adaptive aids, minor home modifications, and dental treatment based on the actual cost of the item and, if requested, a requisition fee in accordance with the *HCS Program Billing Guidelines,* which are available at www.dads.state.tx.us.

(D) DADS pays:

(i) for TAS based on a Transition Assistance Services (TAS) Assessment and Authorization form authorized by DADS and the actual cost of the TAS as evidenced by purchase receipts required by the *HCS Program Billing Guidelines;* and

(ii) if requested, a TAS service fee in accordance with the *HCS Program Billing Guidelines.*

(E) DADS pays for pre-enrollment minor home modifications and a pre-enrollment minor home modifications assessment based on a Home and Community-based Services (HCS) Program Pre-enrollment MHM Authorization Request form authorized by DADS and the actual cost of the pre-enrollment minor home modifications and a pre-enrollment minor home modifications assessment as evidenced by documentation required by the *HCS Program Billing Guidelines.*

(F) Subject to the requirements in the *HCS Program Billing Guidelines,* DADS pays for TAS, pre-enrollment minor home modifications, and a pre-enrollment minor home modifications assessment regardless of whether the applicant enrolls with the program provider.

(G) DADS pays for CFC ERS based on the actual cost of the service, not to exceed the reimbursement rate ceiling for CFC ERS.

(2) If an individual's HCS Program services or CFC services are suspended or terminated the program provider must not submit a claim for services provided during the period of the individual's suspension or after the termination, except that the program provider may submit a claim for the first day of the individual's suspension or termination for the following services:

(A) day habilitation;

(B) supported home living;

(C) respite;

(D) employment assistance;

(E) supported employment;

(F) professional therapies;

(G) nursing; and

(H) CFC PAS/HAB.

(3) If the program provider submits a claim for an adaptive aid that costs $500 or more or for a minor home modification that costs $1,000 or more, the claim must be supported by a written assessment from a licensed professional specified by DADS in the *HCS Program Billing Guidelines* and other documentation as required by the *HCS Program Billing Guidelines.*

(4) DADS does not pay the program provider for a service or recoups any payments made to the program provider for a service if:

(A) except for an individual receiving TAS, pre-enrollment minor home modifications, or a pre-enrollment minor home modifications assessment, the individual receiving the service is, at the time the service was provided, ineligible for the HCS Program or Medicaid benefits, or was an inpatient of a hospital, nursing facility, or ICF/IID;

(B) except for TAS, pre-enrollment minor home modifications, and a pre-enrollment minor home modifications assessment:

(i) the service is provided to an individual during a period of time for which there is not a signed, dated, and authorized IPC for the individual;

(ii) the service is provided during a period of time for which there is not a signed and dated ID/RC Assessment for the individual;

(iii) the service is provided during a period of time for which the individual did not have an LOC determination;

(iv) the service is not provided in accordance with a signed, dated, and authorized IPC meeting the requirements set forth in §9.159(c) of this subchapter (relating to IPC);

(v) the service is not provided in accordance with the individual's PDP or implementation plan;

(vi) the service is provided before the individual's enrollment date into the HCS Program; or

(vii) the service is not included on the signed, dated, and authorized IPC of the individual in effect at the time the service was provided, except as permitted by §9.166(d) of this subchapter (relating to Renewal and Revision of an IPC);

(C) the service is not provided in accordance with the *HCS Program Billing Guidelines* or the *CFC Billing Guidelines for HCS and TxHmL Program Providers;*

(D) the program provider provides the supervised living or residential support service in a residence in which four individuals or other person receiving similar services live without DADS approval as required in §9.188 of this subchapter (relating to DADS Approval of Residences);

(E) the service is not documented in accordance with the *HCS Program Billing Guidelines* or the *CFC Billing Guidelines for HCS and TxHmL Program Providers;*

(F) the claim for the service does not meet the requirements in §49.311 of this title (relating to Claims Payment) or the *HCS Program Billing Guidelines* or the *CFC Billing Guidelines for HCS and TxHmL Program Providers;*

(G) the program provider does not have the documentation described in paragraph (3) of this section;

(H) DADS determines that the service would have been paid for by a source other than the HCS Program if the program provider had submitted to the other source a proper, complete, and timely request for payment for the service;

(I) before including employment assistance on an individual's IPC, the program provider does not ensure and maintain documentation in the individual's record that employment assistance is not available to the individual under a program funded under §110 of the Rehabilitation Act of 1973 or under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.);

(J) before including supported employment on an individual's IPC, the program provider does not ensure and maintain documentation in the individual's record that supported employment is not available to the individual under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.);

(K) the service is provided by a service provider who does not meet the qualifications to provide the service as described in the *HCS Program Billing Guidelines* or the *CFC Billing Guidelines for HCS and TxHmL Program Providers;*

(L) the service of host home/companion care, residential support, or supervised living is provided on the day of the individual's suspension or termination of HCS Program services;

(M) the service was paid at an incorrect LON because the ID/RC Assessment electronically transmitted to DADS does not contain information identical to information on the signed and dated ID/RC Assessment;

(N) for TAS, the service is not provided in accordance with a Transition Assistance Services (TAS) Assessment and Authorization form authorized by DADS;

(O) for pre-enrollment minor home modifications and a pre-enrollment minor home modifications assessment, the service is not provided in accordance with a Home and Community-based Services (HCS) Program Pre-enrollment MHM Authorization Request form authorized by DADS;

(P) for a CFC service, the service is provided to an individual receiving host home/companion care, supervised living, or residential support; or

(Q) for transportation as a supported home living activity, the service is not provided in accordance with a transportation plan.

(5) The program provider must refund to DADS any overpayment made to the program provider within 60 calendar days after the program provider's discovery of the overpayment or receipt of a notice of such discovery from DADS, whichever is earlier.

(6) DADS conducts billing and payment reviews to monitor a program provider's compliance with this subchapter, the *HCS Program Billing Guidelines,* and the *CFC Billing Guidelines for HCS*

and TxHmL Program Providers. DADS conducts such reviews in accordance with the Billing and Payment Review Protocol set forth in the *HCS Program Billing Guidelines* and the *CFC Billing Guidelines for HCS and TxHmL Program Providers.* As a result of a billing and payment review, DADS may:

(A) recoup payments from a program provider; and

(B) based on the amount of unverified claims, require a program provider to develop and submit, in accordance with DADS instructions, a corrective action plan that improves the program provider's billing practices.

(7) A corrective action plan required by DADS in accordance with paragraph (6)(B) of this section must:

(A) include:

(i) the reason the corrective action plan is required;

(ii) the corrective action to be taken;

(iii) the person responsible for taking each corrective action; and

(iv) a date by which the corrective action will be completed that is no later than 90 calendar days after the date the program provider is notified the corrective action plan is required;

(B) be submitted to DADS within 30 calendar days after the date the program provider is notified the corrective action plan is required; and

(C) be approved by DADS before implementation.

(8) Within 30 calendar days after the corrective action plan is received by DADS, DADS notifies the program provider if a corrective action plan is approved or if changes to the plan are required.

(9) If DADS requires a program provider to develop and submit a corrective action plan in accordance with paragraph (6)(B) of this section and the program provider requests an administrative hearing for the recoupment in accordance with §9.186 of this subchapter (relating to Program Provider's Right to Administrative Hearing), the program provider is not required to develop or submit a corrective action plan while a hearing decision is pending. DADS notifies the program provider if the requirement to submit a corrective action plan or the content of such a plan changes based on the outcome of the hearing.

(10) If the program provider does not submit the corrective action plan or complete the required corrective action within the time frames described in paragraph (7) of this section, DADS may impose a vendor hold on payments due to the program provider under the contract until the program provider takes the corrective action.

(11) If the program provider does not submit the corrective action plan or complete the required corrective action within 30 calendar days after the date a vendor hold is imposed in accordance with paragraph (10) of this section, DADS may terminate the contract.

§9.174. Certification Principles: Service Delivery.

(a) The program provider must:

(1) serve an eligible applicant who has selected the program provider unless the program provider's enrollment has reached its service capacity as identified in the DADS data system;

(2) serve an eligible applicant without regard to age, sex, race, or level of disability;

(3) provide or obtain as needed and without delay all HCS Program services and CFC services;

(4) ensure that each applicant or individual, or LAR, chooses where the individual or applicant will reside from available options consistent with the applicant's or individual's needs;

(5) encourage involvement of the LAR or family members and friends in all aspects of the individual's life and provide as much assistance and support as is possible and constructive;

(6) request from and encourage the parent or LAR of an individual under 22 years of age receiving supervised living or residential support to provide the program provider with the following information:

(A) the parent's or LAR's:

(i) name;

(ii) address;

(iii) telephone number;

(iv) driver license number and state of issuance or personal identification card number issued by the Department of Public Safety; and

(v) place of employment and the employer's address and telephone number;

(B) name, address, and telephone number of a relative of the individual or other person whom DADS or the program provider may contact in an emergency situation, a statement indicating the relationship between that person and the individual, and at the parent's or LAR's option:

(i) that person's driver license number and state of issuance or personal identification card number issued by the Department of Public Safety; and

(ii) the name, address, and telephone number of that person's employer; and

(C) a signed acknowledgement of responsibility stating that the parent or LAR agrees to:

(i) notify the program provider of any changes to the contact information submitted; and

(ii) make reasonable efforts to participate in the individual's life and in planning activities for the individual;

(7) inform the parent or LAR that if the information described in paragraph (6) of this subsection is not provided or is not accurate and the service coordinator and DADS are unable to locate the parent or LAR as described in §9.190(e)(35) of this subchapter (relating to LIDDA Requirements for Providing Service Coordination in the HCS Program) and §9.189 of this subchapter (relating to Referral to DFPS), DADS refers the case to DFPS;

(8) for an individual under 22 years of age receiving supervised living or residential support:

(A) make reasonable accommodations to promote the participation of the LAR in all planning and decision-making regarding the individual's care, including participating in meetings conducted by the program provider;

(B) take the following actions to assist a LIDDA in conducting permanency planning:

(i) cooperate with the LIDDA responsible for conducting permanency planning by:

(I) allowing access to an individual's records or providing other information in a timely manner as requested by the local authority or HHSC;

(II) participating in meetings to review the individual's permanency plan; and

(III) identifying, in coordination with the individual's LIDDA, activities, supports, and services that can be provided by the family, LAR, program provider, or the LIDDA to prepare the individual for an alternative living arrangement;

(ii) encourage regular contact between the individual and the LAR and, if desired by the individual and LAR, between the individual and advocates and friends in the community to continue supportive and nurturing relationships;

(iii) keep a copy of the individual's current permanency plan in the individual's record; and

(iv) refrain from providing the LAR with inaccurate or misleading information regarding the risks of moving the individual to another institutional setting or to a community setting;

(C) if an emergency situation occurs, attempt to notify the parent or LAR and service coordinator as soon as the emergency situation allows and request a response from the parent or LAR; and

(D) if the program provider determines it is unable to locate the parent or LAR, notify the service coordinator of such determination;

(9) allow the individual's family members and friends access to an individual without arbitrary restrictions unless exceptional conditions are justified by the individual's service planning team and documented in the PDP;

(10) notify the service coordinator if changes in an individual's age, skills, attitudes, likes, dislikes, or conditions necessitate a change in residential, educational, or work settings;

(11) ensure that the individual who is living outside the family home is living in a residence that maximizes opportunities for interaction with community members to the greatest extent possible;

(12) ensure that the IPC for each individual:

(A) is renewed or, revised in accordance with §9.166 of this subchapter (relating to Renewal and Revision of an IPC); and

(B) is authorized by DADS in accordance with §9.160 of this subchapter (relating to DADS Review of a Proposed IPC);

(13) ensure that HCS Program services and CFC services identified in the individual's implementation plan and transportation plan are provided in an individualized manner and are based on the results of assessments of the individual's and the family's strengths, the individual's personal goals and the family's goals for the individual, and the individual's needs rather than which services are available;

(14) ensure that each individual's progress or lack of progress toward desired outcomes is documented in observable, measurable, or outcome-oriented terms;

(15) ensure that each individual has opportunities to develop relationships with peers with and without disabilities and receives support if the individual chooses to develop such relationships;

(16) ensure that individuals who perform work for the program provider are paid on the basis of their production or performance and at a wage level commensurate with that paid to persons who are without disabilities and who would otherwise perform that work, and that compensation is based on local, state, and federal regulations, including Department of Labor regulations, as applicable;

(17) ensure that individuals who produce marketable goods and services in habilitation training programs are paid at a wage level commensurate with that paid to persons who are without disabilities and who would otherwise perform that work. Compensation is based on requirements contained in the Fair Labor Standards Act, which include:

(A) accurate recordings of individual production or performance;

(B) valid and current time studies or monitoring as appropriate; and

(C) prevailing wage rates;

(18) ensure that individuals provide no training, supervision, or care to other individuals unless they are qualified and compensated in accordance with local, state, and federal regulations, including Department of Labor regulations;

(19) unless contraindications are documented with justification by the service planning team, ensure that an individual's routine provides opportunities for leisure time activities, vacation periods, religious observances, holidays, and days off, consistent with the individual's choice and the routines of other members of the community;

(20) unless contraindications are documented with justification by the service planning team, ensure that an individual of retirement age has opportunities to participate in day activities appropriate to individuals of the same age and consistent with the individual's or LAR's choice;

(21) unless contraindications are documented with justification by the service planning team, ensure that each individual is offered choices and opportunities for accessing and participating in community activities and experiences available to peers without disabilities;

(22) assist the individual to meet as many of the individual's needs as possible by using generic community services and resources in the same way and during the same hours as these generic services are used by the community at large;

(23) ensure that, for an individual receiving host home/companion care, residential support, or supervised living:

(A) the individual lives in a home that is a typical residence within the community;

(B) the residence, neighborhood, and community meet the needs and choices of the individual and provide an environment that ensures the health, safety, comfort, and welfare of the individual;

(C) there is a sufficient supply of hot water at sinks and in bathing facilities to meet the needs of individuals;

(D) the temperature of the hot water at sinks and bathing facilities does not exceed 120 degrees Fahrenheit unless the program provider, in accordance with subsection (i) of this section, conducts a competency-based skills assessment evidencing that all individuals in the residence can independently regulate the temperature of the hot water from the sinks and bathing facilities;

(E) unless contraindications are documented with justification by the service planning team, the individual lives near family and friends and needed or desired community resources consistent with the individual's choice, if possible;

(F) the individual or LAR is involved in planning the individual's residential relocation, except in the case of an emergency;

(G) unless contraindications are documented with justification by the service planning team, the individual has a door lock on the inside of the individual's bedroom door, if requested by the individual or LAR; and

(H) the door lock installed in accordance with subparagraph (G) of this paragraph:

(i) is a single-action lock;

(ii) can be unlocked with a key from the outside of the door by the program provider; and

(iii) is not purchased and installed at the individual's or LAR's expense;

(24) ensure that adaptive aids are provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us and include the full range of lifts, mobility aids, control switches/pneumatic switches and devices, environmental control units, medically necessary supplies, and communication aids and repair and maintenance of the aids as determined by the individual's needs;

(25) together with an individual's service coordinator, ensure the coordination and compatibility of HCS Program services and CFC services with non-HCS Program services and non-CFC services;

(26) ensure that an individual has a current implementation plan;

(27) ensure that:

(A) the following professional therapy services are provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us:

(i) audiology services;

(ii) speech/language pathology services;

(iii) occupational therapy services;

(iv) physical therapy services;

(v) dietary services;

(vi) social work services;

(vii) behavioral support; and

(viii) cognitive rehabilitation therapy; and

(B) if the service planning team determines that an individual may need cognitive rehabilitation therapy, the program provider:

(i) in coordination with the service coordinator, assists the individual in obtaining, in accordance with the Medicaid State Plan, a neurobehavioral or neuropsychological assessment and plan of care from a qualified professional as a non-HCS Program service; and

(ii) has a qualified professional as described in §9.177(q) of this subchapter (relating to Certification Principles: Staff Member and Service Provider Requirements) provide and monitor the provision of cognitive rehabilitation therapy to the individual in accordance with the plan of care described in clause (i) of this subparagraph;

(28) ensure that day habilitation is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us, including:

(A) assisting individuals in acquiring, retaining, and improving self-help, socialization, and adaptive skills necessary to reside successfully in the community;

(B) providing individuals with age-appropriate activities that enhance self-esteem and maximize functional level;

(C) complementing any professional therapies listed in the IPC;

(D) reinforcing skills or lessons taught in school, therapy, or other settings;

(E) training and support activities that promote the individual's integration and participation in the community;

(F) providing assistance for the individual who cannot manage personal care needs during day habilitation activities; and

(G) providing transportation during day habilitation activities as necessary for the individual's participation in day habilitation activities;

(29) ensure that dental treatment is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us, including:

(A) emergency dental treatment;

(B) preventive dental treatment;

(C) therapeutic dental treatment; and

(D) orthodontic dental treatment, excluding cosmetic orthodontia;

(30) ensure that minor home modifications are provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us, limited to the following categories:

(A) purchase and repair of wheelchair ramps;

(B) modifications to bathroom facilities;

(C) modifications to kitchen facilities;

(D) specialized accessibility and safety adaptations or additions; and

(E) repair and maintenance of minor home modifications not covered by a warranty;

(31) ensure that nursing is provided in accordance with the individual's PDP; IPC; implementation plan; Texas Occupations Code, Chapter 301 (Nursing Practice Act); 22 TAC Chapter 217 (relating to Licensure, Peer Assistance, and Practice); 22 TAC Chapter 224 (relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments); 22 TAC Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions); and Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us and consists of performing health care activities and monitoring the individual's health conditions, including:

(A) administering medication;

(B) monitoring the individual's use of medications;

(C) monitoring health risks, data, and information, including ensuring that an unlicensed service provider is performing only those nursing tasks identified from a nursing assessment;

(D) assisting the individual to secure emergency medical services;

(E) making referrals for appropriate medical services;

(F) performing health care procedures ordered or prescribed by a physician or medical practitioner and required by standards of professional practice or law to be performed by an RN or LVN;

(G) delegating nursing tasks to an unlicensed service provider and supervising the performance of those tasks in accordance with state law and rules;

(H) teaching an unlicensed service provider about the specific health needs of an individual;

(I) performing an assessment of an individual's health condition;

(J) an RN doing the following:

(i) performing a nursing assessment for each individual:

(I) before an unlicensed service provider performs a nursing task for the individual unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician; and

(II) as determined necessary by an RN, including if the individual's health needs change;

(ii) documenting information from performance of a nursing assessment;

(iii) if an individual is receiving a service through the CDS option, providing a copy of the documentation described in clause (ii) of this subparagraph to the individual's service coordinator;

(iv) developing the nursing service portion of an individual's implementation plan, which includes developing a plan and schedule for monitoring and supervising delegated nursing tasks; and

(v) making and documenting decisions related to the delegation of a nursing task to an unlicensed service provider; and

(K) in accordance with Texas Human Resources Code, Chapter 161:

(i) allowing an unlicensed service provider to provide administration of medication to an individual without the delegation or oversight of an RN if:

(I) an RN has performed a nursing assessment and, based on the results of the assessment, determined that the individual's health permits the administration of medication by an unlicensed service provider;

(II) the medication is:

(-a-) an oral medication;

(-b-) a topical medication; or

(-c-) a metered dose inhaler;

(III) the medication is administered to the individual for a predictable or stable condition; and

(IV) the unlicensed service provider has been:

(-a-) trained by an RN or an LVN under the direction of an RN regarding the proper administration of medication; or

(-b-) determined to be competent by an RN or an LVN under the direction of an RN regarding proper administration of medication, including through a demonstration of proper technique by the unlicensed service provider; and

(ii) ensuring that an RN or an LVN under the supervision of an RN reviews the administration of medication to an individual by an unlicensed service provider at least annually and after any significant change in the individual's condition;

(32) ensure that supported home living:

(A) is available only to an individual who is not receiving:

(i) host home/companion care;

(ii) supervised living; or

(ii) residential support; and

(B) is available to an individual who is receiving foster care services from DFPS;

(33) ensure that supported home living is provided in accordance with the individual's PDP, IPC, implementation plan, transportation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us and includes the following elements:

(A) direct personal assistance with activities of daily living (grooming, eating, bathing, dressing, and personal hygiene);

(B) assistance with meal planning and preparation;

(C) providing transportation;

(D) securing transportation;

(E) assistance with housekeeping;

(F) assistance with ambulation and mobility;

(G) reinforcement of professional therapy activities;

(H) assistance with medications and the performance of tasks delegated by an RN;

(I) supervision of individuals' safety and security;

(J) facilitating inclusion in community activities, use of natural supports, social interaction, participation in leisure activities, and development of socially valued behaviors; and

(K) habilitation, exclusive of day habilitation;

(34) ensure that HCS host home/companion care is provided:

(A) by a host home/companion care provider who lives in the residence in which no more than three individuals or other persons receiving similar services are living at any one time; and

(B) in a residence in which the program provider does not hold a property interest;

(35) ensure that host home/companion care is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us, and includes the following elements:

(A) direct personal assistance with activities of daily living (grooming, eating, bathing, dressing, and personal hygiene);

(B) assistance with meal planning and preparation;

(C) securing and providing transportation;

(D) assistance with housekeeping;

(E) assistance with ambulation and mobility;

(F) reinforcement of professional therapy activities;

(G) assistance with medications and the performance of tasks delegated by an RN;

(H) supervision of individuals' safety and security;

(I) facilitating inclusion in community activities, use of natural supports, social interaction, participation in leisure activities, and development of socially valued behaviors; and

(J) habilitation, exclusive of day habilitation;

(36) ensure that supervised living is provided:

(A) in a four-person residence that is approved in accordance with §9.188 of this subchapter (relating to DADS Approval of Residences) or a three-person residence;

(B) by a service provider who provides services and supports as needed by the individuals residing in the residence and is present in the residence and able to respond to the needs of the individuals during normal sleeping hours; and

(C) only with approval by the DADS commissioner or designee for the initial six months and one six-month extension and only with approval by the HHSC executive commissioner after such 12-month period, if provided to an individual under 22 years of age;

(37) ensure that supervised living is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us, and includes the following elements:

(A) direct personal assistance with activities of daily living (grooming, eating, bathing, dressing, and personal hygiene);

(B) assistance with meal planning and preparation;

(C) securing and providing transportation;

(D) assistance with housekeeping;

(E) assistance with ambulation and mobility;

(F) reinforcement of professional therapy activities;

(G) assistance with medications and the performance of tasks delegated by an RN;

(H) supervision of individuals' safety and security;

(I) facilitating inclusion in community activities, use of natural supports, social interaction, participation in leisure activities, and development of socially valued behaviors; and

(J) habilitation, exclusive of day habilitation;

(38) ensure that residential support is provided:

(A) in a four-person residence that is approved in accordance with §9.188 of this subchapter or a three-person residence;

(B) by a service provider who is present in the residence and awake whenever an individual is present in the residence;

(C) by service providers assigned on a daily shift schedule that includes at least one complete change of service providers each day; and

(D) only with approval by the DADS commissioner or designee for the initial six months and one six-month extension and only with approval by the HHSC executive commissioner after such 12-month period, if provided to an individual under 22 years of age;

(39) ensure that residential support is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us, and includes the following elements:

(A) direct personal assistance with activities of daily living (grooming, eating, bathing, dressing, and personal hygiene);

(B) assistance with meal planning and preparation;

(C) securing and providing transportation;

(D) assistance with housekeeping;

(E) assistance with ambulation and mobility;

(F) reinforcement of professional therapy activities;

(G) assistance with medications and the performance of tasks delegated by an RN;

(H) supervision of individuals' safety and security;

(I) facilitating inclusion in community activities, use of natural supports, social interaction, participation in leisure activities, and development of socially valued behaviors; and

(J) habilitation, exclusive of day habilitation;

(40) if making a recommendation to the service planning team that the individual receive residential support, document the reasons for the recommendation, which may include:

(A) the individual's medical condition;

(B) a behavior displayed by the individual that poses a danger to the individual or to others; or

(C) the individual's need for assistance with activities of daily living during normal sleeping hours;

(41) ensure that respite is available on a 24-hour increment or any part of that increment to individuals living in their family homes;

(42) ensure that respite is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us and:

(A) includes:

(i) training in self-help and independent living skills;

(ii) providing room and board when respite is provided in a setting other than the individual's normal residence;

(iii) assisting with:

(I) ongoing provision of needed waiver services; and

(II) securing and providing transportation; and

(B) is only provided:

(i) to individuals who are not receiving residential support, supervised living, or host home/companion care; and

(ii) when the unpaid caregiver is temporarily unavailable to provide supports;

(43) provide respite in the residence of an individual or in other locations, including residences in which host home/companion care, supervised living, or residential support is provided or in a respite facility or camp, that meet HCS Program requirements and afford an environment that ensures the health, safety, comfort, and welfare of the individual.

(A) If respite is provided in the residence of another individual, the program provider must obtain permission from that individual or LAR and ensure that the respite visit will cause no threat to the health, safety, or welfare of that individual.

(B) If respite is provided in the residence of another individual, the program provider must ensure that:

(i) no more than three individuals receiving HCS Program services or CFC services and persons receiving similar services for which the program provider is reimbursed are served in a residence in which host home/companion care is provided;

(ii) no more than three individuals receiving HCS Program services or CFC services and persons receiving similar services for which the program provider is reimbursed are served in a residence in which only supervised living is provided; and

(iii) no more than four individuals receiving HCS Program services or CFC services and persons receiving similar services for which the program provider is reimbursed are served in a residence in which residential support is provided.

(C) If respite is provided in a respite facility, the program provider must:

(i) ensure that the facility is not a residence;

(ii) ensure that no more than six individuals receive services in the facility at any one time; and

(iii) obtain written approval from the local fire authority having jurisdiction stating that the facility and its operation meet the local fire ordinances before initiating services in the facility if more than three individuals receive services in the facility at any one time.

(D) If respite is provided in a camp setting, the program provider must ensure the camp is accredited by the American Camp Association.

(E) The program provider must not provide respite in an institution such as an ICF/IID, nursing facility, or hospital;

(44) ensure that employment assistance:

(A) is assistance provided to an individual to help the individual locate competitive employment in the community;

(B) consists of a service provider performing the following activities:

(i) identifying an individual's employment preferences, job skills, and requirements for a work setting and work conditions;

(ii) locating prospective employers offering employment compatible with an individual's identified preferences, skills, and requirements;

(iii) contacting a prospective employer on behalf of an individual and negotiating the individual's employment;

(iv) transporting an individual to help the individual locate competitive employment in the community; and

(v) participating in service planning team meetings;

(C) is provided in accordance with an individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us;

(D) is not provided to an individual with the individual present at the same time that respite, supported home living, day habilitation, supported employment, or CFC PAS/HAB is provided; and

(E) does not include using Medicaid funds paid by DADS to the program provider for incentive payments, subsidies, or unrelated vocational training expenses, such as:

(i) paying an employer:

(I) to encourage the employer to hire an individual; or

(II) for supervision, training, support, or adaptations for an individual that the employer typically makes available to other workers without disabilities filling similar positions in the business; or

(ii) paying an individual:

(I) as an incentive to participate in employment assistance activities; or

(II) for expenses associated with the start-up costs or operating expenses of the individual's business;

(45) ensure that supported employment:

(A) is assistance provided to an individual:

(i) who, because of a disability, requires intensive, ongoing support to be self-employed, work from home, or perform in a work setting at which persons without disabilities are employed;

(ii) in order for the individual to sustain competitive employment; and

(iii) in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us;

(B) consists of a service provider performing the following activities:

(i) making employment adaptations, supervising, and providing training related to an individual's assessed needs;

(ii) transporting an individual to support the individual to be self-employed, work from home, or perform in a work setting; and

(iii) participating in service planning team meetings;

(C) is not provided to an individual with the individual present at the same time that respite, supported home living, day habilitation, supported employment, or CFC PAS/HAB is provided; and

(D) does not include:

(i) sheltered work or other similar types of vocational services furnished in specialized facilities; or

(ii) using Medicaid funds paid by DADS to the program provider for incentive payments, subsidies, or unrelated vocational training expenses such as:

(I) paying an employer:

(-a-) to encourage the employer to hire an individual; or

(-b-) to supervise, train, support, or make adaptations for an individual that the employer typically makes available to other workers without disabilities filling similar positions in the business; or

(II) paying an individual:

(-a-) as an incentive to participate in supported employment activities; or

(-b-) for expenses associated with the start-up costs or operating expenses of the individual's business;

(46) ensure that CFC PAS/HAB is available only to an individual who is not receiving host home/companion care, supervised living, or residential support;

(47) ensure that CFC PAS/HAB is provided in accordance with the individual's PDP, IPC, and implementation plan;

(48) ensure that CFC support management is provided to an individual or LAR if:

(A) the individual is receiving CFC PAS/HAB; and

(B) the individual or LAR requests to receive CFC support management;

(49) inform the service coordinator of changes related to an individual's residential setting that do not require a change to the individual's IPC;

(50) maintain a system of delivering HCS Program services and CFC services that is continuously responsive to changes in the individual's personal goals, condition, abilities, and needs as identified by the service planning team;

(51) ensure that appropriate staff members, service providers, and the service coordinator are informed of a circumstance or event that occurs in an individual's life or a change to an individual's condition that may affect the provision of services to the individual;

(52) maintain current information in the DADS data system about the individual and the individual's LAR, including:

(A) the individual's full name, address, location code, and phone number; and

(B) the LAR's full name, address, and phone number;

(53) maintain a single record related to HCS Program services and CFC services provided to an individual for an IPC year that includes:

(A) the IPC;

(B) the PDP and, if CFC PAS/HAB is included on the PDP, the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form;

(C) the implementation plan;

(D) a behavior support plan, if one has been developed;

(E) a transportation plan, if one is required;

(F) documentation that describes the individual's progress or lack of progress on the implementation plan;

(G) documentation that describes any changes to an individual's personal goals, condition, abilities, or needs;

(H) the ID/RC Assessment;

(I) documentation supporting the recommended LON, including the ICAP booklet, assessments and interventions by qualified professionals, and time sheets of service providers;

(J) results and recommendations from individualized assessments that support the individual's current need for each service included in the IPC;

(K) documentation concerning any use of restraint as described in §9.179(c)(2) and (3) of this subchapter (relating to Certification Principles: Restraint);

(L) documentation related to the suspension of an individual's HCS Program services or CFC services;

(M) for an individual under 22 years of age, a copy of the permanency plan; and

(N) documentation required by subsections (g)(2)(A) and (h)(2)(A) of this section;

(54) upon request by the service coordinator:

(A) permit the service coordinator access to the record that is required by paragraph (53) of this subsection; and

(B) provide the service coordinator a legible copy of a document in the record at no charge to the service coordinator;

(55) provide a copy of the following documents to the service coordinator:

(A) an individual's IPC; and

(B) an individual's ID/RC Assessment;

(56) notify the service coordinator if the program provider has reason to believe that an individual is no longer eligible for HCS Program services or CFC services or an individual or LAR has requested termination of all HCS Program services or all CFC services;

(57) if a physician delegates a medical act to an unlicensed service provider in accordance with Texas Occupations Code, Chapter 157, and the program provider has concerns about the health or safety of the individual in performance of the medical act, communicate the concern to the delegating physician and take additional steps as necessary to ensure the health and safety of the individual;

(58) for an HCS Program service or CFC service identified on the PDP as critical to meeting the individual's health and safety:

(A) develop a service backup plan that:

(i) contains the name of the critical service;

(ii) specifies the period of time in which an interruption to the critical service would result in an adverse effect to the individual's health or safety; and

(iii) in the event of a service interruption resulting in an adverse effect as described in clause (ii) of this subparagraph, describes the actions the program provider will take to ensure the individual's health and safety;

(B) ensure that:

(i) if the action in the service backup plan required by subparagraph (A) of this paragraph identifies a natural support, that the natural support receives pertinent information about the individual's needs and is able to protect the individual's health and safety; and

(ii) a person identified in the service backup plan, if paid to provide the service, meets the qualifications described in this subchapter; and

(C) if the service backup plan required by subparagraph (A) of this paragraph is implemented:

(i) discuss the implementation of the service backup plan with the individual and the service providers or natural supports identified in the service backup plan to determine whether or not the plan was effective;

(ii) document whether or not the plan was effective; and

(iii) revise the plan if the program provider determines the plan was ineffective;

(59) for an applicant 21 years of age or older who is residing in a nursing facility and enrolling in the HCS Program:

(A) participate as a member of the service planning team, which includes attending service planning team meetings scheduled by the service coordinator;

(B) assist in the implementation of the applicant's transition plan as described in the plan; and

(C) be physically present for the pre-move site review and assist the service coordinator during the review as requested; and

(60) for 365 calendar days after an individual 21 years of age or older has enrolled in the HCS Program from a nursing facility or has enrolled in the HCS Program as a diversion from admission to a nursing facility:

(A) be physically present for each post-move monitoring visit and assist the service coordinator during the visit as requested;

(B) assist in the implementation of the individual's transition plan as described in the plan;

(C) participate as a member of the service planning team, which includes attending service planning team meetings scheduled by the service coordinator; and

(D) within one calendar day after becoming aware of an event or condition that may put the individual at risk of admission or readmission to a nursing facility, notify the service planning team of the event or condition.

(b) A program provider may suspend HCS Program services or CFC services because an individual is temporarily admitted to a setting described in §9.155(e) of this subchapter (relating to Eligibility Criteria and Suspension of HCS Program Services and of CFC Services).

(1) If a program provider suspends HCS Program services or CFC services, the program provider must:

(A) notify DADS of the suspension by entering data in the DADS data system in accordance with DADS instructions; and

(B) notify the service coordinator of the suspension within one business day after services are suspended.

(2) A program provider may not suspend HCS Program services or CFC services for more than 270 calendar days without approval from DADS as described in §9.190(e)(20)(C) of this subchapter.

(c) A program provider may determine that an individual does not require a nursing assessment if:

(1) nursing services are not on the individual's IPC and the program provider has determined that no nursing task will be performed by an unlicensed service provider as documented on DADS form "Nursing Task Screening Tool"; or

(2) a nursing task will be performed by an unlicensed service provider and a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician.

(d) If an individual or LAR refuses a nursing assessment described in subsection (a)(31)(J)(i) of this section, the program provider must not:

(1) provide nursing services to the individual; or

(2) provide host home/companion care, residential support, supervised living, supported home living, respite, employment assistance, supported employment, day habilitation, or CFC PAS/HAB to the individual unless:

(A) an unlicensed service provider does not perform nursing tasks in the provision of the service; and

(B) the program provider determines that it can ensure the individual's health, safety, and welfare in the provision of the service.

(e) If an individual or LAR refuses a nursing assessment and the program provider determines that the program provider cannot ensure the individual's health, safety, and welfare in the provision of a service as described in subsection (d) of this section, the program provider must:

(1) immediately notify the individual or LAR and the individual's service coordinator, in writing, of the determination; and

(2) include in the notification required by paragraph (1) of this subsection the reasons for the determination and the services affected by the determination.

(f) If notified by the service coordinator that the individual or LAR refuses the nursing assessment after the discussion with the service coordinator as described in §9.190(e)(21)(A) of this subchapter, the program provider must immediately send the written notification described in subsection (e) of this section to DADS.

(g) The program provider must provide TAS in accordance with this subsection.

(1) The program provider must:

(A) provide TAS to an applicant for whom the program provider receives from the service coordinator a completed Transition Assistance Services (TAS) Assessment and Authorization form authorized by DADS, as described in §9.158(k)(6)(C) of this subchapter (relating to Process for Enrollment of Applicants);

(B) purchase TAS for the applicant within the monetary amount identified on the form;

(C) deliver to the applicant the specific TAS identified on the form;

(D) ensure TAS is provided in accordance with the individual's PDP and with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us; and

(E) complete the delivery of TAS at least two days before the date of the applicant's discharge from the nursing facility, ICF/IID, or GRO unless the delay in completion is beyond the control of the program provider.

(2) If the program provider does not deliver TAS in accordance with paragraph (1) of this subsection, the program provider must:

(A) document the following:

(i) a description of the pending TAS;

(ii) the reason for the delay;

(iii) the date the program provider anticipates it will deliver the pending TAS or specific reasons why the program provider cannot anticipate a delivery date; and

(iv) a description of the program provider's ongoing efforts to deliver the TAS; and

(B) at least two days before the date of the applicant's discharge from the nursing facility, ICF/IID, or GRO, provide the information described in subparagraph (A) of this paragraph to:

(i) the applicant or LAR; and

(ii) the service coordinator.

(3) Within one business day after the TAS has been delivered, the program provider must notify the service coordinator and the applicant or LAR that the TAS has been delivered.

(h) The program provider must provide pre-enrollment minor home modifications and a pre-enrollment minor home modifications assessment in accordance with this subsection.

(1) The program provider must:

(A) complete a pre-enrollment minor home modifications assessment in accordance with the *HCS Program Billing Guidelines;*

(B) provide pre-enrollment minor home modifications to an applicant for whom the program provider receives from the service coordinator a completed Pre-enrollment Minor Home Modifications/Assessments Authorization form authorized by DADS, as described in §9.158(k)(8)(C) of this subchapter;

(C) provide to the applicant the specific pre-enrollment minor home modifications identified on the form;

(D) provide the pre-enrollment minor home modifications for the applicant within the monetary amount identified on the form;

(E) ensure pre-enrollment minor home modifications and pre-enrollment minor home modifications assessments are provided in accordance with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us; and

(F) complete the pre-enrollment minor home modifications at least two days before the date of the applicant's discharge from the nursing facility, ICF/IID, or GRO unless the delay in completion is beyond the control of the program provider.

(2) If the program provider does not complete pre-enrollment minor home modifications in accordance with paragraph (1) of this subsection, the program provider must:

(A) document the following:

(i) a description of the pending modifications;

(ii) the reason for the delay;

(iii) the date the program provider anticipates it will complete the pending modifications or specific reasons why the program provider cannot anticipate a completion date; and

(iv) a description of the program provider's ongoing efforts to complete the modifications; and

(B) at least two days before the date of the applicant's discharge from the nursing facility, ICF/IID, or GRO, provide the information described in subparagraph (A) of this paragraph to:

(i) the applicant or LAR; and

(ii) the service coordinator.

(3) Within one business day after completion of the pre-enrollment minor home modifications, the program provider must notify the service coordinator and the applicant or LAR that the modifications have been completed.

(i) If the program provider conducts the competency-based skills assessment described in subsection (a)(23)(D) of this section:

(1) the assessment must:

(A) be conducted by a staff member who is not a service provider of residential support, supervised living, or host home/companion care who works or lives in the residence;

(B) be conducted for each individual;

(C) evaluate the individual's cognitive and physical ability to independently mix or regulate the hot water temperature without assistance or guidance from each sink and bathing facility in the residence; and

(D) be based on a face-to-face demonstration by the individual; and

(2) the program provider must:

(A) complete the assessment at least annually;

(B) document the results of the assessment; and

(C) keep a copy of the results in the residence.

(j) CFC ERS must be provided in accordance with this subsection.

(1) A program provider must ensure that CFC ERS is provided only to an individual who:

(A) is not receiving host home/companion care, supervised living, or residential support;

(B) lives alone, who is alone for significant parts of the day, or has no regular caregiver for extended periods of time; and

(C) would otherwise require extensive routine supervision.

(2) A program provider must ensure that CFC ERS is provided in accordance with the individual's PDP, IPC, and implementation plan.

(3) A program provider must ensure that CFC ERS equipment is installed within 14 business days after one of the following dates, whichever is later:

(A) the date DADS authorizes the proposed IPC that includes CFC ERS; or

(B) the effective date of the individual's IPC as determined by the service planning team.

(4) At the time CFC ERS equipment is installed, a program provider must ensure that:

(A) the equipment is installed in accordance with the manufacturer's installation instructions;

(B) an initial test of the equipment is made;

(C) the equipment has an alternate power source in the event of a power failure;

(D) the individual is trained on the use of the equipment, including:

(i) demonstrating how the equipment works; and

(ii) having the individual activate an alarm call;

(E) an explanation is given to the individual that the individual must:

(i) participate in a system check each month; and

(ii) contact the CFC ERS provider if:

(I) the individual's telephone number or address changes; or

(II) one or more of the individual's responders change; and

(F) the individual is informed that a responder, in response to an alarm call, may forcibly enter the individual's home if necessary.

(5) A program provider must ensure that the date and time of the CFC ERS equipment installation and compliance with the requirements in paragraphs (3) and (4) of this subsection are documented in the individual's record.

(6) A program provider must ensure that, on or before the date CFC ERS equipment is installed:

(A) an attempt is made to obtain from an individual, the names and telephone numbers of at least two responders, such as a relative or neighbor;

(B) public emergency personnel:

(i) is designated as a second responder if the individual provides the name of only one responder; or

(ii) is designated as the sole responder if the individual does not provide the names of any responders; and

(C) the name and telephone number of each responder is documented in the individual's record.

(7) At least once during each calendar month a program provider must ensure that a system check is conducted on a date and time agreed to by the individual.

(8) A program provider must ensure that the date, time, and result of the system check is documented in the individual's record.

(9) If, as a result of the system check:

(A) the equipment is working properly but the individual is unable to successfully activate an alarm call, the program provider must ensure that a request is made of the service coordinator to convene a service planning team meeting to determine if CFC ERS meets the individual's needs; or

(B) the equipment is not working properly, the program provider must ensure that, within three calendar days of the system check, the equipment is repaired or replaced.

(10) If a system check is not conducted in accordance with paragraph (7) of this subsection, the program provider must ensure that:

(A) the failure to comply is because of good cause; and

(B) the good cause is documented in the individual's record.

(11) A program provider must ensure that an alarm call is responded to 24 hours a day, seven days a week.

(12) A program provider must ensure that, if an alarm call is made, the CFC ERS provider:

(A) within 60 seconds of the alarm call, attempts to contact the individual to determine if an emergency exists;

(B) immediately contacts a responder, if as a result of attempting to contact the individual:

(i) the CFC ERS provider confirms there is an emergency; or

(ii) the CFC ERS provider is unable to communicate with the individual; and

(C) documents the following information in the individual's record when the information becomes available:

(i) the name of the individual;

(ii) the date and time of the alarm call, recorded in hours, minutes, and seconds;

(iii) the response time, recorded in seconds;

(iv) the time the individual is called in response to the alarm call, recorded in hours, minutes, and seconds;

(v) the name of the contacted responder, if applicable;

(vi) a brief description of the reason for the alarm call; and

(vii) if the reason for the alarm call is an emergency, a statement of how the emergency was resolved.

(13) If an alarm call results in a responder being dispatched to the individual's home for an emergency, the program provider must ensure that:

(A) the service coordinator receives written notice of the alarm call within one business day after the alarm call;

(B) if the CFC ERS provider is a contracted provider, the program provider receives written notice from the contracted provider within one business day after the alarm call; and

(C) the written notices required by subparagraph (A) and (B) of this paragraph are maintained in the individual's record.

(14) A program provider must ensure that, if an equipment failure occurs, other than during a system check required by paragraph (7) of this subsection:

(A) the individual is informed of the equipment failure; and

(B) the equipment is replaced within one business day after the failure becomes known by the CFC ERS provider.

(15) If an individual is not informed of the equipment failure and the equipment is not replaced in compliance with paragraph (14) of this subsection, the program provider must ensure that:

(A) the failure to comply is because of good cause; and

(B) as soon as possible, the individual is informed of the equipment failure and the equipment is replaced.

(16) A program provider must ensure that, if the CFC ERS equipment registers five or more "low battery" signals in a 72-hour period:

(A) a visit to an individual's home is made to conduct a system check within five business days after the low battery signals occur; and

(B) if the battery is defective, the battery is replaced during the visit.

(17) A program provider must ensure that, if a system check or battery replacement is not made in accordance with paragraph (16) of this subsection:

(A) the failure to comply is because of good cause; and

(B) as soon as possible, a system check and battery replacement is made.

(18) A program provider must ensure that the following information is documented in an individual's record:

(A) the date the equipment failure or low battery signal became known by the CFC ERS provider;

(B) the equipment or subscriber number;

(C) a description of the problem;

(D) the date the equipment or battery was repaired or replaced; and

(E) the good cause for failure to comply as described in paragraphs (15)(A) and (17)(A) of this subsection.

§9.177. Certification Principles: Staff Member and Service Provider Requirements.

(a) The program provider must ensure the continuous availability of trained and qualified service providers to deliver the required services as determined by the individual's needs.

(b) The program provider must employ or contract with a person or entity of the individual's or LAR's choice in accordance with this subsection.

(1) Except as provided by paragraph (2) of this subsection, the program provider must employ or contract with a person or entity of the individual's or LAR's choice to provide an HCS Program service or CFC service to the individual if that person or entity:

(A) is qualified to provide the service;

(B) unless the program provider agrees to pay a higher amount, provides the service at or below:

(i) for any service except CFC ERS, the direct services portion of the applicable HCS Program rate; and

(ii) for CFC ERS, the reimbursement rate; and

(C) is willing to contract with or be employed by the program provider to provide the service in accordance with this subchapter.

(2) The program provider may choose not to employ or contract with a person or entity of the individual's or LAR's choice in accordance with paragraph (1) of this subsection for good cause. The program provider must document the good cause.

(3) If a program provider contracts with a person or entity to provide TAS, the person or entity must have a contract to provide TAS in accordance with Chapter 49 of this title (relating to Contracting for Community Services).

(c) A program provider must comply with each applicable regulation required by the State of Texas in ensuring that its operations and staff members and service providers meet state certification, licensure, or regulation for any tasks performed or services delivered in part or in entirety for the HCS Program.

(d) A program provider must:

(1) conduct initial and periodic training that ensures:

(A) staff members and service providers are qualified to deliver services as required by the current needs and characteristics of the individuals to whom they deliver services, including the use of restraint in accordance with §9.179 of this subchapter (relating to Certification Principles: Restraint); and

(B) staff members, service providers, and volunteers are knowledgeable about the information described in §49.310(3)(A) of this title (relating to Abuse, Neglect, and Exploitation Allegations); and

(2) ensure that a staff member who participates in developing an implementation plan for CFC PAS/HAB completes person-centered service planning training approved by HHSC:

(A) by June 1, 2017, if the staff member was hired on or before June 1, 2015; or

(B) within two years after hire, if the staff member was hired after June 1, 2015.

(e) The program provider must implement and maintain personnel practices that safeguard individuals against infectious and communicable diseases.

(f) The program provider's operations must prevent:

(1) conflicts of interest between the program provider, a staff member, or a service provider and an individual, such as the acceptance of payment for goods or services from which the program provider, staff member, or service provider could financially benefit, except payment for room and board;

(2) financial impropriety toward an individual including:

(A) unauthorized disclosure of information related to an individual's finances; and

(B) the purchase of goods that an individual cannot use with the individual's funds;

(3) abuse, neglect, or exploitation of an individual;

(4) damage to or prevention of an individual's access to the individual's possessions; and

(5) threats of the actions described in paragraphs (2) - (4) of this subsection.

(g) The program provider must employ or contract with a person who oversees the provision of HCS Program services and CFC services to an individual. The person must:

(1) have at least three years paid work experience in planning and providing HCS Program services or CFC services to an individual with an intellectual disability or related condition as verified by written statements from the person's employer; or

(2) have both of the following:

(A) at least three years of experience planning and providing services similar to HCS Program services or CFC services to a person with an intellectual disability or related condition as verified by written statements from organizations or agencies that provided services to the person; and

(B) participation as a member of a microboard as verified, in writing, by:

(i) the certificate of formation of the non-profit corporation under which the microboard operates filed with the Texas Secretary of State;

(ii) the bylaws of the non-profit corporation; and

(iii) a statement by the board of directors of the non-profit corporation that the person is a member of the microboard.

(h) The program provider must ensure that a service provider of day habilitation, supported home living, host home/companion care, supervised living, residential support, and respite is at least 18 years of age and:

(1) has a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma; or

(2) has documentation of a proficiency evaluation of experience and competence to perform the job tasks that includes:

(A) a written competency-based assessment of the ability to document service delivery and observations of the individuals to be served; and

(B) at least three written personal references from persons not related by blood that indicate the ability to provide a safe, healthy environment for the individuals being served.

(i) The program provider must ensure that each service provider of professional therapies is currently qualified by being licensed by the State of Texas or certified in the specific area for which services are delivered or be providing services in accordance with state law.

(j) The program provider must ensure that a service provider of behavioral support services:

(1) meets one of the following:

(A) is licensed as a psychologist in accordance with Texas Occupations Code, Chapter 501;

(B) is licensed as a psychological associate in accordance with Texas Occupations Code, Chapter 501;

(C) has been issued a provisional license to practice psychology in accordance with Texas Occupations Code, Chapter 501;

(D) is certified by DADS as described in §5.161 of this title (relating to Certified Authorized Provider);

(E) is licensed as a licensed clinical social worker in accordance with Texas Occupations Code, Chapter 505;

(F) is licensed as a licensed professional counselor in accordance with Texas Occupations Code, Chapter 503; or

(G) is certified as a behavior analyst by the Behavior Analyst Certification Board, Inc.; and

(2) completes the web-based DADS HCS and TxHmL Behavioral Support Services Provider Policy Training available at www.dads.state.tx.us:

(A) before providing behavioral support services;

(B) within 90 calendar days after the date DADS issues notice to program providers that DADS revised the web-based training; and

(C) within three years after the most recent date of completion.

(k) The program provider must ensure that a service provider who provides transportation:

(1) has a valid driver's license; and

(2) transports individuals in a vehicle insured in accordance with state law.

(l) The program provider must ensure that dental treatment is provided by a dentist licensed by the Texas State Board of Dental Examiners in accordance with Texas Occupations Code, Chapter 256.

(m) The program provider must ensure that nursing services are provided by a nurse who is currently qualified by being licensed by the Texas Board of Nursing as an RN or LVN.

(n) The program provider must comply with §49.304 of this title (relating to Background Checks).

(o) A program provider must comply with §49.312(a) of this title (relating to Personal Attendants).

(p) If the service provider of supported home living or CFC PAS/HAB is employed by or contracts with a contractor of a program provider, the program provider must ensure that the contractor complies with subsection (o) of this section as if the contractor were the program provider.

(q) The program provider must ensure that a service provider of cognitive rehabilitation therapy is:

(1) a psychologist licensed in accordance with Texas Occupations Code, Chapter 501;

(2) a speech-language pathologist licensed in accordance with Texas Occupations Code,
Chapter 401; or

(3) an occupational therapist licensed in accordance with Texas Occupations Code, Chapter 454.

(r) The program provider must ensure that a service provider of employment assistance or a service provider of supported employment:

(1) is at least 18 years of age;

(2) is not:

(A) the spouse of the individual; or

(B) a parent of the individual if the individual is a minor; and

(3) has:

(A) a bachelor's degree in rehabilitation, business, marketing, or a related human services field, and at least six months of paid or unpaid experience providing services to people with disabilities;

(B) an associate's degree in rehabilitation, business, marketing, or a related human services field, and at least one year of paid or unpaid experience providing services to people with disabilities; or

(C) a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma, and at least two years of paid or unpaid experience providing services to people with disabilities.

(s) A program provider must ensure that the experience required by subsection (r) of this section is evidenced by:

(1) for paid experience, a written statement from a person who paid for the service or supervised the provision of the service; and

(2) for unpaid experience, a written statement from a person who has personal knowledge of the experience.

(t) A program provider must ensure that a service provider of TAS:

(1) is at least 18 years of age;

(2) has a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma;

(3) is not a relative of the applicant;

(4) is not the LAR of the applicant;

(5) does not live with the applicant; and

(6) is capable of providing TAS and complying with the documentation requirements described in §9.174(g)(2)(A) of this subchapter (relating to Certification Principles: Service Delivery).

(u) A program provider must:

(1) ensure that a service provider of CFC PAS/HAB:

(A) is at least 18 years of age;

(B) has:

(i) a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma; or

(ii) documentation of a proficiency evaluation of experience and competence to perform the job tasks that includes:

(I) a written competency-based assessment of the ability to document service delivery and observations of the individuals to be served; and

(II) at least three written personal references from persons not related by blood that indicate the ability to provide a safe, healthy environment for the individuals being served;

(C) is not:

(i) the spouse of the individual; or

(ii) a parent of the individual if the individual is a minor; and

(D) meets any other qualifications requested by the individual or LAR based on the individual's needs and preferences; and

(2) if requested by an individual or LAR:

(A) allow the individual or LAR to:

(i) train a CFC PAS/HAB service provider in the specific assistance needed by the individual; and

(ii) have the service provider perform CFC PAS/HAB in a manner that comports with the individual's personal, cultural, or religious preferences; and

(B) ensure that a CFC PAS/HAB service provider attends training by HHSC or DADS so the service provider meets any additional qualifications desired by the individual or LAR.

§9.188. DADS Approval of Residences.

(a) A program provider must obtain DADS written approval in accordance with subsection (b) of this section before providing residential support in a four-person residence.

(b) To obtain approval of a four-person residence, the program provider must submit the following written documentation to DADS:

(1) the address and county of the residence;

(2) certification from the program provider that the program provider intends to provide residential support to one or more individuals who will live in the residence;

(3) one of the certifications required by §9.178(e)(1)(A) of this subchapter (relating to Certification Principles: Quality Assurance); and

(4) written certification from the program provider that the residence to be approved is not the residence of any person except a person permitted to live in the residence as described in §9.153(32)(D) of this subchapter (relating to Definitions).

(c) DADS notifies the program provider in writing of its approval or disapproval of the four-person residence within 14 calendar days after DADS receives the documentation specified in subsection (b) of this section.

§9.190. LIDDA Requirements for Providing Service Coordination in the HCS Program.

(a) In addition to the requirements described in Chapter 2, Subchapter L of this title (relating to Service Coordination for Individuals with an Intellectual Disability), a LIDDA must, in the provision of service coordination in the HCS Program, ensure compliance with the requirements in this subchapter and Chapter 41 of this title (relating to Consumer Directed Services Option).

(b) A LIDDA must employ service coordinators who:

(1) meet the minimum qualifications and LIDDA staff training requirements specified in Chapter 2, Subchapter L of this title; and

(2) have received training about:

(A) the HCS Program and CFC, including the requirements of this subchapter and the HCS Program services and CFC services described in §9.154 of this subchapter (relating to Description of the HCS Program and CFC); and

(B) Chapter 41 of this title.

(c) A LIDDA must have a process for receiving and resolving complaints from a program provider related to the LIDDA's provision of service coordination or the LIDDA's process to enroll an applicant in the HCS Program.

(d) If, as a result of monitoring, the service coordinator identifies a concern with the implementation of the PDP, the LIDDA must ensure that the concern is communicated to the program provider and attempts made to resolve the concern. The LIDDA may refer an unresolved concern to DADS Consumer Rights and Services.

(e) A service coordinator must:

(1) assist an individual or LAR in exercising the legal rights of the individual as a citizen and as a person with a disability;

(2) provide an applicant or individual, LAR, or family member with a written copy of the rights of the individual as described in §9.173(b) of this subchapter (relating to Certification Principles: Rights of Individuals) and the booklet titled *Your Rights In a Home and Community-Based Services Program* (which is found at www.dads.state.tx.us.) and an oral explanation of such rights:

(A) upon enrollment in the HCS Program;

(B) upon revision of the booklet;

(C) upon request; and

(D) upon change in an individual's legal status (that is when the individual turns 18 years of age, is appointed a guardian, or loses a guardian);

(3) document the provision of the rights described in §9.173(b) of this subchapter and the booklet and oral explanation required by paragraph (2) of this subsection and ensure that the documentation is signed by:

(A) the individual or LAR; and

(B) the service coordinator;

(4) ensure that, at the time an applicant is enrolled, the applicant or LAR is informed orally and in writing of the processes for filing complaints as follows:

(A) the telephone number of the LIDDA to file a complaint;

(B) the toll-free telephone number of DADS to file a complaint; and

(C) the toll-free telephone number of DFPS (1-800-647-7418) to report an allegation of abuse, neglect, or exploitation;

(5) maintain for an individual for an IPC year:

(A) a copy of the IPC;

(B) the PDP and, if CFC PAS/HAB is included on the PDP, the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form;

(C) a copy of the ID/RC Assessment;

(D) documentation of the activities performed by the service coordinator in providing service coordination; and

(E) any other pertinent information related to the individual;

(6) initiate, coordinate, and facilitate person-directed planning, including scheduling service planning team meetings;

(7) to meet the needs of an individual as those needs are identified, develop for the individual a full range of services and resources using:

(A) providers for services other than HCS Program services and CFC services; and

(B) advocates or other actively involved persons;

(8) ensure that the PDP for an applicant or individual:

(A) is developed, reviewed, and updated in accordance with:

(i) §9.158(j)(4)(A) of this subchapter (relating to Process for Enrollment of Applicants);

(ii) §9.166 of this subchapter (relating to Renewal and Revision of an IPC); and

(iii) §2.556 of this title (relating to LIDDA's Responsibilities);

(B) states, for each HCS Program service, other than supervised living and residential support, and for each CFC service, whether the service is critical to the individual's health and safety as determined by the service planning team;

(9) participate in the development, renewal, and revision of an individual's IPC in accordance with §9.158 and §9.166 of this subchapter;

(10) ensure that the service planning team participates in the renewal and revision of the IPC for an individual in accordance with §9.166 of this subchapter and ensure that the service planning team completes other responsibilities and activities as described in this subchapter;

(11) notify the service planning team of the information conveyed to the service coordinator pursuant to §9.178(v)(3)(C) and (4)(B) of this subchapter (relating to Certification Principle: Quality Assurance);

(12) if a change to an individual's PDP is needed, other than as required by §9.166 of this subchapter:

(A) communicate the need for the change to the individual or LAR, the program provider, and other appropriate persons; and

(B) revise the PDP as necessary;

(13) provide an individual's program provider a copy of the individual's current PDP;

(14) monitor the delivery of HCS Program services, CFC services, and non-HCS Program and non-CFC services to an individual;

(15) document whether an individual progresses toward desired outcomes identified on the individual's PDP;

(16) together with the program provider, ensure the coordination and compatibility of HCS Program services and CFC services with non-HCS Program and non-CFC services, including, in coordination with the program provider, assisting an individual in obtaining a neurobehavioral or neuropsychological assessment and plan of care from a qualified professional as described in §9.174(a)(27)(B) of this subchapter (relating to Certification Principles: Service Delivery);

(17) for an individual who has had a guardian appointed, determine, at least annually, if the letters of guardianship are current;

(18) for an individual who has not had a guardian appointed, make a referral of guardianship to a court, if appropriate;

(19) immediately notify the program provider if the service coordinator becomes aware that an emergency necessitates the provision of an HCS Program service or a CFC service to ensure the individual's health or safety and the service is not on the IPC or exceeds the amount on the IPC;

(20) if informed by the program provider that an individual's HCS Program services or CFC services have been suspended:

(A) request the program provider enter necessary information in the DADS data system to inform DADS of the suspension;

(B) review the individual's status and document in the individual's record the reasons for continuing the suspension, at least every 90 calendar days after the effective date of the suspension; and

(C) to continue suspension of the services for more than 270 calendar days, submit to DADS written documentation of each review made in accordance with subparagraph (B) of this paragraph and a request for approval by DADS to continue the suspension;

(21) if notified by the program provider that an individual or LAR has refused a nursing assessment and that the program provider has determined it cannot ensure the individual's health, safety, and welfare in the provision of a service as described in §9.174(e) of this title (relating to Certification Principles: Service Delivery):

(A) inform the individual or LAR of the consequences and risks of refusing the assessment, including that the refusal will result in the individual not receiving:

(i) nursing services; or

(ii) host home/companion care, residential support, supervised living, supported home living, respite, employment assistance, supported employment, day habilitation, or CFC PAS/HAB, if the individual needs one of those services and the program provider has

determined that it cannot ensure the health and safety of the individual in the provision of the service; and

(B) notify the program provider if the individual or LAR continues to refuse the assessment after the discussion with the service coordinator;

(22) notify the program provider if the service coordinator becomes aware that an individual has been admitted to a setting described in §9.155(e) of this subchapter (relating to Eligibility Criteria and Suspension of HCS Program Services and of CFC Services);

(23) if the service coordinator determines that HCS Program services or CFC services provided to an individual should be terminated, including for a reason described in §9.158(k)(15)(A) or (B) of this subchapter:

(A) document a description of:

(i) the situation that resulted in the service coordinator's determination that services should be terminated;

(ii) the attempts by the service coordinator to resolve the situation; and

(B) send a written recommendation to terminate the individual's HCS Program services or CFC services to DADS and include the documentation required by subparagraph (A) of this paragraph;

(C) provide a copy of the written recommendation and the documentation required by subparagraph (A) of this paragraph to the program provider;

(24) if an individual requests termination of all HCS Program services or all CFC services, the service coordinator must, within ten calendar days after the individual's request:

(A) inform the individual or LAR of:

(i) the individual's option to transfer to another program provider;

(ii) the consequences of terminating HCS Program services and CFC services; and

(iii) possible service resources upon termination, including CFC services through a managed care organization; and

(B) submit documentation to DADS that:

(i) states the reason the individual is making the request; and

(ii) demonstrates that the individual or LAR was provided the information required by subparagraph (A)(ii) and (iii) of this paragraph;

(25) in accordance with DADS instructions, manage the process to transfer an individual's HCS Program services and CFC services from one program provider to another or transfer from one FMSA to another, including:

(A) informing the individual or LAR who requests a transfer to another program provider or FMSA that the service coordinator will manage the transfer process;

(B) informing the individual or LAR that the individual or LAR may choose:

(i) to receive HCS Program services and CFC services from any program provider that is in the geographic location preferred by the individual or LAR and whose enrollment has not reached its service capacity in the DADS data system; or

(ii) to transfer to any FMSA in the geographic location preferred by the individual or LAR; and

(C) if the individual or LAR has not selected another program provider or FMSA, providing the individual or LAR with a list of and contact information for HCS Program providers and FMSAs in the geographic location preferred by the individual or LAR;

(26) be objective in assisting an individual or LAR in selecting a program provider or FMSA;

(27) at the time of assignment and as changes occur, ensure that an individual and LAR and program provider are informed of the name of the individual's service coordinator and how to contact the service coordinator;

(28) unless contraindications are documented with justification by the service planning team, ensure that a school-age individual receives educational services in a six-hour-per-day program, five days per week, provided by the local school district and that no individual receives educational services at a state supported living center or at a state center;

(29) unless contraindications are documented with justification by the service planning team, ensure that an adult individual under retirement age is participating in a day activity of the individual's choice that promotes achievement of PDP outcomes for at least six hours per day, five days per week;

(30) unless contraindications are documented with justification by the service planning team, ensure that a pre-school-age individual receives an early childhood education with appropriate activities and services, including small group and individual play with peers without disabilities;

(31) unless contraindications are documented with justification by the service planning team, ensure that an individual of retirement age has opportunities to participate in day activities appropriate to individuals of the same age and consistent with the individual's or LAR's choice;

(32) unless contraindications are documented with justification by the service planning team, ensure that each individual is offered choices and opportunities for accessing and participating in community activities and experiences available to peers without disabilities;

(33) assist an individual to meet as many of the individual's needs as possible by using generic community services and resources in the same way and during the same hours as these generic services are used by the community at large;

(34) for an individual receiving host home/companion care, residential support, or supervised living, ensure that the individual or LAR is involved in planning the individual's residential relocation, except in a case of an emergency;

(35) if the program provider notifies the service coordinator that the program provider is unable to locate the parent or LAR in accordance with §9.174(a)(8)(D) of this subchapter (relating to Certification Principles: Service Delivery) or the LIDDA notifies the service coordinator that the LIDDA is unable to locate the parent or LAR in accordance with §9.167(b)(9) of this subchapter (relating to Permanency Planning):

(A) make reasonable attempts to locate the parent or LAR by contacting a person identified by the parent or LAR in the contact information described in paragraph (37)(A) - (B) of this subsection; and

(B) notify DADS, no later than 30 calendar days after the date the service coordinator determines the service coordinator is unable to locate the parent or LAR, of the determination and request that DADS initiate a search for the parent or LAR;

(36) if the service coordinator determines that a parent's or LAR's contact information described in paragraph (37)(A) of this subsection is no longer current:

(A) make reasonable attempts to locate the parent or LAR by contacting a person identified by the parent or LAR in the contact information described in paragraph (37)(B) of this subsection; and

(B) notify DADS, no later than 30 calendar days after the date the service coordinator determines the service coordinator is unable to locate the parent or LAR, of the determination and request that DADS initiate a search for the parent or LAR;

(37) request from and encourage the parent or LAR of an individual under 22 years of age requesting or receiving supervised living or residential support to provide the service coordinator with the following information:

(A) the parent's or LAR's:

(i) name;

(ii) address;

(iii) telephone number;

(iv) driver license number and state of issuance or personal identification card number issued by the Department of Public Safety; and

(v) place of employment and the employer's address and telephone number;

(B) name, address, and telephone number of a relative of the individual or other person whom DADS or the service coordinator may contact in an emergency situation, a statement indicating the relationship between that person and the individual, and at the parent's or LAR's option:

(i) that person's driver license number and state of issuance or personal identification card number issued by the Department of Public Safety; and

(ii) the name, address, and telephone number of that person's employer; and

(C) a signed acknowledgement of responsibility stating that the parent or LAR agrees to:

(i) notify the service coordinator of any changes to the contact information submitted; and

(ii) make reasonable efforts to participate in the individual's life and in planning activities for the individual;

(38) within three business days after initiating supervised living or residential support to an individual under 22 years of age:

(A) provide the information listed in subparagraph (B) of this paragraph to the following:

(i) the CRCG for the county in which the individual's LAR lives (see www.hhsc.state.tx.us for a listing of CRCG chairpersons by county); and

(ii) the local school district for the area in which the three- or four-person residence is located, if the individual is at least three years of age, or the early childhood intervention (ECI) program for the county in which the residence is located, if the individual is less than three years of age (see http://www.dars.state.tx.us/ecis/searchprogram.asp to search for an ECI program by zip code or by county); and

(B) as required by subparagraph (A) of this paragraph, provide the following information to the entities described in subparagraph (A) of this paragraph:

(i) the individual's full name;

(ii) the individual's gender;

(iii) the individual's ethnicity;

(iv) the individual's birth date;

(v) the individual's social security number;

(vi) the LAR's name, address, and county of residence;

(vii) the date of initiation of supervised living or residential support;

(viii) the address where supervised living or residential support is provided; and

(ix) the name and phone number of the person providing the information;

(39) for an applicant or individual under 22 years of age seeking or receiving supervised living or residential support:

(A) make reasonable accommodations to promote the participation of the LAR in all planning and decision making regarding the individual's care, including participating in:

(i) the initial development and annual review of the individual's PDP;

(ii) decision making regarding the individual's medical care;

(iii) routine service planning team meetings; and

(iv) decision making and other activities involving the individual's health and safety;

(B) ensure that reasonable accommodations include:

(i) conducting a meeting in person or by telephone, as mutually agreed upon by the program provider and the LAR;

(ii) conducting a meeting at a time and location, if the meeting is in person, that is mutually agreed upon by the program provider and the LAR;

(iii) if the LAR has a disability, providing reasonable accommodations in accordance with the Americans with Disabilities Act, including providing an accessible meeting location or a sign language interpreter, if appropriate; and

(iv) providing a language interpreter, if appropriate;

(C) provide written notice to the LAR of a meeting to conduct an annual review of the individual's PDP at least 21 calendar days before the meeting date and request a response from the LAR regarding whether the LAR intends to participate in the annual review;

(D) before an individual who is under 18 years of age, or who is 18-21 years of age and has an LAR, moves to another residence operated by the program provider, attempt to obtain consent for the move from the LAR unless the move is made because of a serious risk to the health or safety of the individual or another person; and

(E) document compliance with subparagraphs (A) - (D) of this paragraph in the individual's record;

(40) conduct:

(A) a pre-move site review for an applicant 21 years of age or older who is enrolling in the HCS Program from a nursing facility; and

(B) post-move monitoring visits for an individual 21 years of age or older who enrolled in the HCS Program from a nursing facility or has enrolled in the HCS Program as a diversion from admission to a nursing facility;

(41) have a face-to-face contact with an individual to provide service coordination during a month in which it is anticipated that the individual will not receive an HCS Program service unless:

(A) the individual's HCS Program services have been suspended; or

(B) the service coordinator had a face-to-face contact with the individual that month to comply with §2.556(d) of this title (relating to MRA's Responsibilities); and

(42) at least annually:

(A) using a DADS form, provide an oral and written explanation to the individual or LAR of:

(i) the eligibility requirements for HCS Program services as described in §9.155(a) of this subchapter; and

(ii) if the individual's PDP includes CFC services:

(I) the eligibility requirements for CFC services as described in §9.155(c) of this subchapter; and

(II) the eligibility requirements for CFC services as described in §9.155(d) of this subchapter to individuals who receive MAO Medicaid; and

(B) using a DADS form, provide an oral and written explanation to the individual or LAR of all HCS Program services and CFC services.

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

Filed with the Office of the Secretary of State on February 29, 2016.

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General Counsel
Department of Aging and Disability Services
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For further information, please call: (512) 438-4855

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SUBCHAPTER N. TEXAS HOME LIVING (TXHML) PROGRAM AND COMMUNITY FIRST CHOICE (CFC)

40 TAC §§9.551, 9.553 - 9.556, 9.558, 9.567, 9.568, 9.570, 9.571, 9.573, 9.576 - 9.580, 9.583

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

§9.553. Definitions.

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

(1) ADLs--Activities of daily living. Basic personal everyday activities including tasks such as eating, toileting, grooming, dressing, bathing, and transferring.

(2) Alarm call--A signal transmitted from an individual's CFC ERS equipment to the CFC ERS response center indicating that the individual needs immediate assistance.

(3) Applicant--A Texas resident seeking services in the TxHmL Program.

(4) Business day--Any day except a Saturday, a Sunday, or a national or state holiday listed in Texas Government Code §662.003(a) or (b).

(5) Calendar day--Any day, including weekends and holidays.

(6) CDS option--Consumer directed services option. A service delivery option as defined in §41.103 of this title (relating to Definitions).

(7) CFC--Community First Choice.

(8) CFC ERS--CFC emergency response services. Backup systems and supports used to ensure continuity of services and supports. CFC ERS includes electronic devices and an array of available technology, personal emergency response systems, and other mobile communication devices.

(9) CFC ERS provider--The entity directly providing CFC ERS to an individual, which may be the program provider or a contractor of the program provider.

(10) CFC FMS--The term used for FMS on the IPC of an applicant or individual if the applicant or individual receives only CFC PAS/HAB through the CDS option.

(11) CFC PAS/HAB--CFC personal assistance services/habilitation. A service:

(A) that consists of:

(i) personal assistance services that provide assistance to an individual in performing ADLs and IADLs based on the individual's person-centered service plan, including:

(I) non-skilled assistance with the performance of the ADLs and IADLs;

(II) household chores necessary to maintain the home in a clean, sanitary, and safe environment;

(III) escort services, which consist of accompanying and assisting an individual to access services or activities in the community, but do not include transporting an individual; and

(IV) assistance with health-related tasks; and

(ii) habilitation that provides assistance to an individual in acquiring, retaining, and improving self-help, socialization, and daily living skills and training the individual on ADLs, IADLs, and health-related tasks, such as:

(I) self-care;

(II) personal hygiene;

(III) household tasks;

(IV) mobility;

(V) money management;

(VI) community integration, including how to get around in the community;

(VII) use of adaptive equipment;

(VIII) personal decision making;

(IX) reduction of challenging behaviors to allow individuals to accomplish ADLs, IADLs, and health-related tasks; and

(X) self-administration of medication; and

(B) does not include transporting the individual, which means driving the individual from one location to another.

(12) CFC support consultation--The term used for support consultation on the IPC of an applicant or individual if the applicant or individual receives only CFC PAS/HAB through the CDS option.

(13) CFC support management--Training regarding how to select, manage, and dismiss an unlicensed service provider of CFC PAS/HAB as described in the HCS Handbook.

(14) CMS--Centers for Medicare and Medicaid Services. The federal agency within the United States Department of Health and Human Services that administers the Medicare and Medicaid programs.

(15) Competitive employment--Employment that pays an individual at least minimum wage if the individual is not self-employed.

(16) Condition of a serious nature--Except as provided in paragraph (24) of this section, a condition in which a program provider's noncompliance with a certification principle caused or could cause physical, emotional, or financial harm to one or more of the individuals receiving services from the program provider.

(17) Contract--A provisional contract or a standard contract.

(18) Critical incident--An event listed in the TxHmL Provider User Guide found at http://www2.mhmr.state.tx.us/655/cis/training/txhmlGuide.html.

(19) DADS--The Department of Aging and Disability Services.

(20) DFPS--The Department of Family and Protective Services.

(21) FMS--Financial management services. A service, as defined in §41.103 of this title, that is provided to an individual participating in the CDS option.

(22) FMSA--Financial management services agency. As defined in §41.103 of this title, an entity that provides financial management services to an individual participating in the CDS option.

(23) Former military member--A person who served in the United States Army, Navy, Air Force, Marine Corps, or Coast Guard:

(A) who declared and maintained Texas as the person's state of legal residence in the manner provided by the applicable military branch while on active duty; and

(B) who was killed in action or died while in service, or whose active duty otherwise ended.

(24) Good cause--As used in §9.578 of this subchapter, a reason outside the control of the CFC ERS provider, as determined by DADS.

(25) Hazard to health or safety--A condition in which serious injury or death of an individual or other person is imminent because of a program provider's noncompliance with a certification principle.

(26) HCS Program--The Home and Community-based Services Program operated by DADS as authorized by CMS in accordance with §1915(c) of the Social Security Act.

(27) Health-related tasks--Specific tasks related to the needs of an individual, which can be delegated or assigned by licensed health care professionals under state law to be performed by a service provider of CFC PAS/HAB. These include tasks delegated by an RN; health maintenance activities as defined in 22 TAC §225.4 (relating to Definitions), that may not require delegation; and activities assigned to a service provider of CFC PAS/HAB by a licensed physical therapist, occupational therapist, or speech-language pathologist.

(28) HHSC--Health and Human Services Commission.

(29) ICAP--Inventory for Client and Agency Planning.

(30) IADLs--Instrumental activities of daily living. Activities related to living independently in the community, including meal planning and preparation; managing finances; shopping for food, clothing, and other essential items; performing essential household chores; communicating by phone or other media; and traveling around and participating in the community.

(31) ICF/IID--Intermediate care facility for individuals with an intellectual disability or related conditions. An ICF/IID is a facility in which ICF/IID Program services are provided and that is:

(A) licensed in accordance with THSC, Chapter 252; or

(B) certified by DADS, including a state supported living center.

(32) ICF/IID Program--The Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions Program, which provides Medicaid-funded residential services to individuals with an intellectual disability or related conditions.

(33) ID/RC Assessment--A form used by DADS for LOC determination and LON assignment.

(34) Implementation Plan--A written document developed by a program provider for an individual that, for each TxHmL Program service, except for transportation provided as a community support activity, and CFC service, except for CFC support management, on the individual's IPC to be provided by the program provider, includes:

(A) a list of outcomes identified in the PDP that will be addressed using TxHmL Program services and CFC services;

(B) specific objectives to address the outcomes required by subparagraph (A) of this paragraph that are:

(i) observable, measurable, and outcome-oriented; and

(ii) derived from assessments of the individual's strengths, personal goals, and needs;

(C) a target date for completion of each objective;

(D) the number of units of TxHmL Program services and CFC services needed to complete each objective;

(E) the frequency and duration of TxHmL Program services and CFC services needed to complete each objective; and

(F) the signature and date of the individual, LAR, and the program provider.

(35) Individual--A person enrolled in the TxHmL Program.

(36) Intellectual disability--Significant sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(37) IPC--Individual plan of care. A written plan that:

(A) states:

(i) the type and amount of each TxHmL Program service and each CFC service, except for CFC support management, to be provided to an individual during an IPC year;

(ii) the services and supports to be provided to the individual through resources other than TxHmL Program services or CFC services, including natural supports, medical services, and educational services; and

(iii) if an individual will receive CFC support management; and

(B) is authorized by DADS.

(38) IPC cost--Estimated annual cost of program services included on an IPC.

(39) IPC year--A 12-month period of time starting on the date an authorized initial or renewal IPC begins.

(40) LAR--Legally authorized representative. A person authorized by law to act on behalf of a person with regard to a matter described in this subchapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(41) LIDDA--Local intellectual and developmental disability authority. An entity designated by the executive commissioner of HHSC, in accordance with THSC §533A.035.

(42) LOC--Level of care. A determination made by DADS about an applicant or individual as part of the TxHmL Program eligibility determination process based on data electronically transmitted on the ID/RC Assessment.

(43) LON--Level of need. An assignment given by DADS for an applicant or individual that is derived from the service level score obtained from the administration of the Inventory for Client and Agency Planning (ICAP) to the individual and from selected items on the ID/RC Assessment.

(44) LVN--Licensed vocational nurse. A person licensed to practice vocational nursing in accordance with Texas Occupations Code, Chapter 301.

(45) Managed care organization--This term has the meaning set forth in Texas Government Code, §536.001.

(46) MAO Medicaid--Medical Assistance Only Medicaid. A type of Medicaid by which an applicant or individual qualifies financially for Medicaid assistance but does not receive Supplemental Security Income (SSI) benefits.

(47) Microboard--A program provider:

(A) that is a non-profit corporation;

(i) that is created and operated by no more than 10 persons, including an individual;

(ii) the purpose of which is to address the needs of the individual and directly manage the provision of the TxHmL Program services or CFC services; and

(iii) in which each person operating the corporation participates in addressing the needs of the individual and directly managing the provision of TxHmL Program services or CFC services; and

(B) that has a service capacity designated in the DADS data system of no more than three individuals.

(48) Military member--A member of the United States military serving in the Army, Navy, Air Force, Marine Corps, or Coast Guard on active duty who has declared and maintains Texas as the member's state of legal residence in the manner provided by the applicable military branch.

(49) Military family member--A person who is the spouse or child (regardless of age) of:

(A) a military member; or

(B) a former military member.

(50) Natural supports--Unpaid persons, including family members, volunteers, neighbors, and friends, who assist and sustain an individual.

(51) Nursing facility--A facility licensed in accordance with THSC, Chapter 242.

(52) Own home or family home--A residence that is not:

(A) an ICF/IID;

(B) a nursing facility;

(C) an assisted living facility licensed or subject to being licensed in accordance with THSC, Chapter 247;

(D) a residential child-care operation licensed or subject to being licensed by DFPS unless it is a foster family home or a foster group home;

(E) a facility licensed or subject to being licensed by the Department of State Health Services;

(F) a residential facility operated by the Department of Assistive and Rehabilitative Services;

(G) a residential facility operated by the Texas Juvenile Justice Department, a jail, or a prison; or

(H) a setting in which two or more dwellings, including units in a duplex or apartment complex, single family homes, or facilities listed in subparagraphs (A) - (G) of this paragraph, but excluding

supportive housing under Section 811 of the National Affordable Housing Act of 1990, meet all of the following criteria:

(i) the dwellings create a residential area distinguishable from other areas primarily occupied by persons who do not require routine support services because of a disability;

(ii) most of the residents of the dwellings are persons with an intellectual disability; and

(iii) the residents of the dwellings are provided routine support services through personnel, equipment, or service facilities shared with the residents of the other dwellings.

(53) PDP--Person-directed plan. A written plan, based on person-directed planning and developed with an applicant or individual in accordance with the DADS Person-Directed Plan form and discovery tool found at www.dads.state.tx.us, that describes the supports and services necessary to achieve the desired outcomes identified by the applicant, individual, or LAR and ensure the applicant's or individual's health and safety.

(54) Performance contract--A written agreement between DADS and a LIDDA for the performance of delegated functions, including those described in THSC, §533A.035.

(55) Post-move monitoring visit--As described in §17.503 of this title, a visit conducted by the service coordinator in the individual's residence and other locations, as determined by the service planning team, for an individual who enrolled in the TxHmL Program from a nursing facility or enrolled in the TxHmL Program as a diversion from admission to a nursing facility. The purpose of the visit is to review the individual's residence and other locations to:

(A) assess whether essential supports identified in the transition plan are in place;

(B) identify gaps in care; and

(C) address such gaps, if any, to reduce the risk of crisis, re-admission to a nursing facility, or other negative outcome.

(56) Pre-move site review--As described in §17.503 of this title, (relating to Transition Planning for a Designated Resident), a review conducted by the service coordinator in the planned residence and other locations, as determined by the service planning team, for an applicant transitioning from a nursing facility to the TxHmL Program. The purpose of the review is to ensure that essential services and supports described in the applicant's transition plan are in place before the applicant moves to the residence or receives services in the other locations.

(57) Program provider--A person, as defined in §49.102 of this title (relating to Definitions), that has a contract with DADS to provide TxHmL Program services, excluding an FMSA.

(58) Provisional contract--An initial contract that DADS enters into with a program provider in accordance with §49.208 of this title (relating to Provisional Contract Application Approval) that has a stated expiration date.

(59) Public emergency personnel--Personnel of a sheriff's department, police department, emergency medical service, or fire department.

(60) Related condition--A severe and chronic disability that:

(A) is attributed to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, other than mental illness, found to be closely related to an intellectual disability because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of individuals with an intellectual disability, and requires treatment or services similar to those required for individuals with an intellectual disability;

(B) is manifested before the individual reaches age 22;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in at least three of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

(61) Respite facility--A site that is not a residence and that is owned or leased by a program provider for the purpose of providing out-of-home respite to not more than six individuals receiving TxHmL Program services or other persons receiving similar services at any one time.

(62) Responder--A person designated to respond to an alarm call activated by an individual.

(63) RN--Registered nurse. A person licensed to practice professional nursing in accordance with Texas Occupations Code, Chapter 301.

(64) Seclusion--The involuntary separation of an individual away from other individuals and the placement of the individual alone in an area from which the individual is prevented from leaving.

(65) Service backup plan--A plan that ensures continuity of a service that is critical to an individual's health and safety if service delivery is interrupted.

(66) Service coordination--A service as defined in Chapter 2, Subchapter L of this title (relating to Service Coordination for Individuals with an Intellectual Disability).

(67) Service coordinator--An employee of a LIDDA who provides service coordination to an individual.

(68) Service planning team--One of the following:

(A) for an applicant or individual other than one described in subparagraphs (B) or (C) of this paragraph, a planning team consisting of:

(i) an applicant or individual and LAR;

(ii) service coordinator; and

(iii) other persons chosen by the applicant, individual, or LAR, for example, a staff member of the program provider, a family member, a friend, or a teacher;

(B) for an applicant 21 years of age or older who is residing in a nursing facility and enrolling in the TxHmL Program, a planning team consisting of:

(i) the applicant and LAR;

(ii) service coordinator;

(iii) a staff member of the program provider;

(iv) providers of specialized services;

(v) a nursing facility staff person who is familiar with the applicant's needs;

(vi) other persons chosen by the applicant or LAR, for example, a family member, a friend, or a teacher; and

(vii) at the discretion of the LIDDA, other persons who are directly involved in the delivery of services to persons with an intellectual or developmental disability; or

(C) for an individual 21 years of age or older who has enrolled in the TxHmL program from a nursing facility or has enrolled in the TxHmL Program as a diversion from admission to a nursing facility, for 180 days after enrollment, a planning team consisting of:

(i) the individual and LAR;

(ii) service coordinator;

(iii) a staff member of the program provider;

(iv) other persons chosen by the individual or LAR, for example, a family member, a friend, or a teacher; and

(v) at the discretion of the LIDDA, other persons who are directly involved in the delivery of services to persons with an intellectual or developmental disability.

(69) Service provider--A person, who may be a staff member, who directly provides a TxHmL Program service or CFC service to an individual.

(70) Specialized services--Services defined in §17.102 of this title (relating to Definitions).

(71) Staff member--An employee or contractor of a TxHmL Program provider.

(72) Standard contract--A contract that DADS enters into with a program provider in accordance with §49.209 of this title (relating to Standard Contract) that does not have a stated expiration date.

(73) State supported living center--A state-supported and structured residential facility operated by DADS to provide to persons with an intellectual disability a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills, but does not include a community-based facility owned by DADS.

(74) System check--A test of the CFC ERS equipment to determine if:

(A) the individual can successfully activate an alarm call; and

(B) the equipment is working properly.

(75) Support consultation--A service, as defined in §41.103 of this title, that is provided to an individual participating in the CDS option at the request of the individual or LAR.

(76) TAC--Texas Administrative Code. A compilation of state agency rules published by the Texas Secretary of State in accordance with Texas Government Code, Chapter 2002, Subchapter C.

(77) THSC--Texas Health and Safety Code. Texas statutes relating to health and safety.

(78) Transition plan--As described in §17.503 of this title, a written plan developed by the service planning team for an applicant residing in a nursing facility who is enrolling in the TxHmL Program. A transition plan includes the essential and nonessential services and supports the applicant needs to transition from a nursing facility to a community setting.

(79) Transportation plan--A written plan, based on person-directed planning and developed with an applicant or individual using DADS Individual Transportation Plan form found at www.dads.state.tx.us. A transportation plan is used to document how transportation as a community support activity will be delivered to support an individual's desired outcomes and purposes for transportation as identified in the PDP.

(80) TxHmL Program--The Texas Home Living Program, operated by DADS and approved by CMS in accordance with §1915(c) of the Social Security Act, that provides community-based services and supports to eligible individuals who live in their own homes or in their family homes.

(81) Vendor hold--A temporary suspension of payments that are due to a program provider under a contract.

§9.555. Description of TxHmL Program Services.

(a) Community support provides services and supports in an individual's home and at other community locations that are necessary to achieve outcomes identified in an individual's PDP.

(1) Community support provides:

(A) habilitative or support activities that:

(i) provide or foster improvement of or facilitate an individual's ability to perform functional living skills and other activities of daily living;

(ii) assist an individual to develop competencies in maintaining the individual's home life;

(iii) foster improvement of or facilitate an individual's ability and opportunity to:

(I) participate in typical community activities including activities that lead to successful employment;

(II) access and use of services and resources available to all citizens in the individual's community;

(III) interact with members of the community;

(IV) access and use available non-TxHmL Program services or supports for which the individual may be eligible; and

(V) establish or maintain relationships with people who are not paid service providers that expand or sustain the individual's natural support network;

(B) transportation; and or

(C) assistance in obtaining transportation.

(2) Community support, as determined by an assessment conducted by an RN, provides assistance with medications and the performance of tasks delegated by an RN in accordance with state law and rules, unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician.

(3) Community support does not include payment for room or board.

(4) Community support may not be provided to the individual at the same time that any of the following services are provided:

(A) respite;

(B) day habilitation;

(C) employment assistance with the individual present; or

(D) supported employment with the individual present.

(b) Day habilitation assists an individual to acquire, retain, or improve self-help, socialization, and adaptive skills necessary to live successfully in the community and participate in home and community life.

(1) Day habilitation provides:

(A) individualized activities consistent with achieving the outcomes identified in the individual's PDP;

(B) activities necessary to reinforce therapeutic outcomes targeted by other waiver services, school, or other support providers;

(C) services in a group setting other than the individual's home for normally up to five days a week, six hours per day;

(D) personal assistance for an individual who cannot manage personal care needs during the day habilitation activity;

(E) as determined by an assessment conducted by an RN, assistance with medications and the performance of tasks delegated by an RN in accordance with state law and rules, unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician; and

(F) transportation during the day habilitation activity necessary for the individual's participation in day habilitation activities.

(2) Day habilitation may not be provided at the same time that any of the following services are provided:

(A) respite;

(B) community support;

(C) employment assistance with the individual present;

(D) supported employment with the individual present; or

(E) CFC PAS/HAB.

(c) Nursing provides treatment and monitoring of health care procedures ordered or prescribed by a practitioner and as required by standards of professional practice or state law to be performed by an RN or LVN. Nursing includes:

(1) administering medication;

(2) monitoring an individual's use of medications;

(3) monitoring an individual's health risks, data, and information, including ensuring that an unlicensed service provider is performing only those nursing tasks identified in a nursing assessment;

(4) assisting an individual or LAR to secure emergency medical services for the individual;

(5) making referrals for appropriate medical services;

(6) performing health care procedures as ordered or prescribed by a practitioner and required by standards of professional practice or law to be performed by an RN or LVN;

(7) delegating nursing tasks assigned to an unlicensed service provider and supervising the performance of those tasks in accordance with state law and rules;

(8) teaching an unlicensed service provider about the specific health needs of an individual;

(9) performing an assessment of an individual's health condition;

(10) an RN doing the following:

(A) performing a nursing assessment for each individual:

(i) before an unlicensed service provider performs a nursing task for the individual unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician; and

(ii) as determined necessary by an RN, including if the individual's health needs change;

(B) documenting information from performance of a nursing assessment;

(C) if an individual is receiving a service through CDS, providing a copy of the documentation described in described in subparagraph (B) of this paragraph to the individual's service coordinator;

(D) developing the nursing service portion of an individual's implementation plan required by §9.578(c)(2) of this subchapter (relating to Program Provider Certification Principles: Service Delivery), which includes developing a plan and schedule for monitoring and supervising delegated nursing tasks; and

(E) making and documenting decisions related to the delegation of a nursing task to an unlicensed service provider;

(11) in accordance with Texas Human Resources Code, Chapter 161:

(A) allowing an unlicensed service provider to provide administration of medication to an individual without the delegation or oversight of an RN if:

(i) an RN has performed a nursing assessment and, based on the results of the assessment, determined that the individual's health permits the administration of medication by an unlicensed service provider;

(ii) the medication is:

(I) an oral medication;

(II) a topical medication; or

(III) a metered dose inhaler;

(iii) the medication is administered to the individual for a predictable or stable condition; and

(iv) the unlicensed service provider has been:

(I) trained by an RN or an LVN under the direction of an RN regarding the proper administration of medication; or

(II) determined to be competent by an RN or an LVN under the direction of an RN regarding proper administration of medication, including through a demonstration of proper technique by the unlicensed service provider; and

(B) ensuring that an RN or an LVN under the supervision of an RN reviews the administration of medication to an individual by an unlicensed service provider at least annually and after any significant change in the individual's condition.

(d) Employment assistance:

(1) is assistance provided to an individual to help the individual locate competitive employment in the community;

(2) consists of a service provider performing the following activities:

(A) identifying an individual's employment preferences, job skills, and requirements for a work setting and work conditions;

(B) locating prospective employers offering employment compatible with an individual's identified preferences, skills, and requirements;

(C) contacting a prospective employer on behalf of an individual and negotiating the individual's employment;

(D) transporting the individual to help the individual locate competitive employment in the community; and

(E) participating in service planning team meetings;

(3) is not provided to an individual with the individual present at the same time that respite, community support, day habilitation, or supported employment, or CFC PAS/HAB is provided;

(4) does not include using Medicaid funds paid by DADS to the program provider for incentive payments, subsidies, or unrelated vocational training expenses, such as:

(A) paying an employer:

(i) to encourage the employer to hire an individual; or

(ii) for supervision, training, support, or adaptations for an individual that the employer typically makes available to other workers without disabilities filling similar positions in the business; or

(B) paying the individual:

(i) as an incentive to participate in employment assistance activities; or

(ii) for expenses associated with the start-up costs or operating expenses of an individual's business; and

(5) as determined by an assessment conducted by an RN, provides assistance with medications and the performance of tasks delegated by an RN in accordance with state law and rules, unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician.

(e) Supported employment:

(1) is assistance provided to an individual:

(A) who, because of a disability, requires intensive, ongoing support to be self-employed, work from home, or perform in a work setting at which individuals without disabilities are employed; and

(B) in order for the individual to sustain competitive employment;

(2) consists of a service provider performing the following activities:

(A) making employment adaptations, supervising, and providing training related to an individual's assessed needs;

(B) transporting the individual to support the individual to be self-employed, work from home, or perform in a work setting; and

(C) participating in service planning team meetings;

(3) is not provided to an individual with the individual present at the same time that respite, community support, day habilitation, employment assistance, or CFC PAS/HAB is provided;

(4) does not include sheltered work or other similar types of vocational services furnished in specialized facilities, or using Medicaid funds paid by DADS to the program provider for incentive payments, subsidies, or unrelated vocational training expenses, such as:

(A) paying an employer:

(i) to encourage the employer to hire an individual; or

(ii) to supervise, train, support, or make adaptations for an individual that the employer typically makes available to other workers without disabilities filling similar positions in the business; or

(B) paying the individual:

(i) as an incentive to participate in supported employment activities; or

(ii) for expenses associated with the start-up costs or operating expenses of an individual's business; and

(5) as determined by an assessment conducted by an RN, provides assistance with medications and the performance of tasks delegated by an RN in accordance with state law and rules, unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician.

(f) Behavioral support provides specialized interventions that assist an individual to increase adaptive behaviors to replace or modify challenging or socially unacceptable behaviors that prevent or interfere with the individual's inclusion in home and family life or community life. Behavioral support includes:

(1) assessment and analysis of assessment findings of the behavior(s) to be targeted necessary to design an appropriate behavioral support plan;

(2) development of an individualized behavioral support plan consistent with the outcomes identified in the individual's PDP;

(3) training of and consultation with the LAR, family members, or other support providers and, as appropriate, with the individual in the purpose/objectives, methods and documentation of the implementation of the behavioral support plan or revisions of the plan;

(4) monitoring and evaluation of the success of the behavioral support plan implementation; and

(5) modification, as necessary, of the behavioral support plan based on documented outcomes of the plan's implementation.

(g) Adaptive aids enable an individual to increase mobility, the ability to perform activities of daily living, or the ability to perceive, control, or communicate with the environment in which the individual lives. Adaptive aids include devices, controls, appliances, or supplies and the repair or maintenance of such aids, if not covered by warranty, as specified in the *TxHmL Program Billing Guidelines.*

(1) Adaptive aids are provided to address specific needs identified in an individual's PDP and are limited to:

(A) lifts;

(B) mobility aids;

(C) positioning devices;

(D) control switches/pneumatic switches and devices;

(E) environmental control units;

(F) medically necessary supplies;

(G) communication aids;

(H) adapted/modified equipment for activities of daily living; and

(I) safety restraints and safety devices.

(2) Adaptive aids may be provided up to a maximum of $10,000 per individual per IPC year.

(3) Adaptive aids do not include items or supplies that are not of direct medical or remedial benefit to the individual or that are available to the individual through the Medicaid State Plan, through other governmental programs, or through private insurance.

(h) Minor home modifications are physical adaptations to the individual's home that are necessary to ensure the health, welfare, and safety of the individual or to enable the individual to function with greater independence in the home and the repair or maintenance of such adaptations, if not covered by warranty.

(1) Minor home modifications may be provided up to a lifetime limit of $7,500 per individual. After the $7,500 lifetime limit has been reached, an individual is eligible for an additional $300 per IPC year for additional modifications or maintenance of home modifications.

(2) Minor home modifications do not include adaptations or improvements to the home that are of general utility, are not of direct medical or remedial benefit to the individual, or add to the total square footage of the home.

(3) Minor home modifications are limited to:

(A) purchase and repair of mobility/wheelchair ramps;

(B) modifications to bathroom facilities;

(C) modifications to kitchen facilities; and

(D) specialized accessibility and safety adaptations.

(i) Dental treatment may be provided up to a maximum of $1,000 per individual per IPC year for the following treatments:

(1) emergency dental treatment;

(2) preventive dental treatment;

(3) therapeutic dental treatment; and

(4) orthodontic dental treatment, excluding cosmetic orthodontia.

(j) Respite is provided for the relief of an unpaid caregiver of an individual when the caregiver is temporarily unavailable to provide supports.

(1) Respite includes:

(A) assistance with activities of daily living and functional living tasks;

(B) assistance with planning and preparing meals;

(C) transportation or assistance in securing transportation;

(D) assistance with ambulation and mobility;

(E) as determined by an assessment conducted by an RN, assistance with medications and the performance of tasks delegated by an RN in accordance with state law and rules, unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician;

(F) habilitation and support that facilitate:

(i) an individual's inclusion in community activities, use of natural supports and typical community services available to all people;

(ii) an individual's social interaction and participation in leisure activities; and

(iii) development of socially valued behaviors and daily living and independent living skills.

(2) Reimbursement for respite provided in a setting other than the individual's residence includes payment for room and board.

(3) Respite may be provided in the individual's residence or, if certification principles stated in §9.578(o) of this subchapter are met, in other locations.

(k) Professional therapies provide assessment and treatment by a licensed professional who meets the qualifications specified in §9.579 of this subchapter (relating to Certification Principles: Qualified Personnel) and include training and consultation with an individual's LAR, family members or other support providers. Professional therapies available under the TxHmL Program are:

(1) audiology services;

(2) speech/language pathology services;

(3) occupational therapy services;

(4) physical therapy services;

(5) dietary services;

(6) social work services; and

(7) behavioral support.

(l) FMS are provided if the individual's IPC includes at least one TxHmL Program service to be delivered through the CDS option.

(m) Support consultation is provided at the request of the individual or LAR if the individual's IPC includes at least one TxHmL Program service to be delivered through the CDS option.

§9.556. Eligibility Criteria for TxHmL Program Services and CFC Services.

(a) An applicant or individual is eligible for TxHmL Program services if:

(1) the applicant or individual meets the financial eligibility criteria as described in Appendix B of the TxHmL waiver application approved by CMS and found at www.dads.state.tx.us;

(2) the applicant or individual meets one of the following criteria:

(A) based on a determination of an intellectual disability performed in accordance with THSC, Chapter 593, Subchapter A and as determined by DADS in accordance with §9.560 of this subchapter (relating to Level of Care (LOC) Determination), qualifies for an ICF/IID LOC I as defined in §9.238 of this chapter (relating to Level of Care I Criteria); or

(B) meets the following criteria:

(i) based on a determination of an intellectual disability performed in accordance with THSC, Chapter 593, Subchapter A and as determined by DADS in accordance with §9.560 of this subchapter, qualifies for one of the following levels of care:

(I) an ICF/IID LOC I as defined in §9.238 of this chapter; or

(II) an ICF/IID LOC VIII as defined in §9.239 of this chapter (relating to ICF/MR Level of Care VIII Criteria);

(ii) meets one of the following:

(I) resides in a nursing facility immediately prior to enrolling in the TxHmL Program; or

(II) is at imminent risk of entering a nursing facility as determined by DADS; and

(iii) is offered TxHmL Program services designated for a member of the reserved capacity group "Individuals with a level of care I or VIII residing in a nursing facility" included in Appendix B of the TxHmL Program waiver application approved by CMS and found at www.dads.state.tx.us;

(3) the applicant or individual has been assigned an LON 1, 5, 8, or 6 in accordance with §9.562 of this subchapter (relating to Level of Need (LON) Assignment);

(4) the applicant or individual has an IPC cost that does not exceed $17,000;

(5) the applicant or individual is not enrolled in another waiver program and is not receiving a service that may not be received if the individual is enrolled in the TxHmL Program, as identified in the Mutually Exclusive Services table in Appendix I of the HCS Handbook available at www.dads.state.tx.us;

(6) the applicant or individual has chosen, or the applicant's or individual's LAR has chosen, participation in the TxHmL Program over participation in the ICF/IID Program;

(7) the applicant's or individual's service planning team concurs that the TxHmL Program services and, if applicable, non-TxHmL Program services for which the applicant or individual may be eligible are sufficient to ensure the applicant's or individual's health and welfare in the community;

(8) the applicant or individual lives in the applicant's or individual's own home or family home; and

(9) the applicant or individual requires the provision of:

(A) at least one TxHmL Program service per month or a monthly monitoring visit by a service coordinator as described in §9.583(p) of this subchapter (relating to TxHmL Program Principles for LIDDAs); and

(B) at least one TxHmL Program service per IPC year.

(b) Except as provided in subsection (c) of this section, an applicant or individual is eligible for a CFC service under this subchapter if the applicant or individual:

(1) meets the criteria described in subsection (a) of this section; and

(2) requires the provision of the CFC service.

(c) To be eligible for a CFC service under this subchapter, an applicant or individual receiving MAO Medicaid must, in addition to meeting the eligibility criteria described in subsection (b) of this section, receive a TxHmL Program service at least monthly, as required by 42 CFR §441.510(d), which may not be met by a monthly monitoring visit by a service coordinator as described in §9.583(p) of this subchapter.

§9.558. Individual Plan of Care (IPC).

(a) An IPC must be developed for each applicant in accordance with §9.567 of this subchapter (relating to Process for Enrollment) and reviewed and revised for each individual whenever the individual's needs for services and supports change, but no less than annually, in accordance with §9.568 of this subchapter (relating to Revisions and Renewals of Individual Plans of Care (IPCs), Levels of Care (LOCs), and Levels of Need (LONs) for Enrolled Individuals).

(b) An IPC must be based on the PDP and specify the type and amount of each TxHmL Program service and CFC service to be provided to the individual, as well as non-TxHmL Program and non-CFC services and supports to be provided during the IPC year. The type and amount of each TxHmL Program service and CFC service in the IPC must be supported by:

(1) documentation that non-TxHmL Program and non-CFC sources for the service are unavailable and the service supplements rather than replaces natural supports or non-TxHmL Program and non-CFC services;

(2) assessments of the individual, including the DADS HCS/TxHmL CFC PAS/HAB Assessment form, that identify specific services necessary for the individual to continue living in the community, to ensure the individual's health and welfare in the community, and to prevent the individual's admission to institutional services; and

(3) documentation of the deliberations and conclusions of the service planning team that the TxHmL Program services and CFC services are necessary for the individual to live in the community; are necessary to prevent the individual's admission to institutional services, and are sufficient, when combined with services or supports available from non-TxHmL Program and non-CFC sources (if applicable), to ensure the individual's health and welfare in the community.

(c) Before electronic transmission to DADS, an individual's IPC must be signed and dated by the required service planning team members indicating concurrence that the services recommended in the IPC meet the requirements of subsection (b) of this section.

(d) DADS reviews an electronically transmitted initial, revised, or renewal IPC and approves, modifies, or does not approve the IPC.

(e) An electronically transmitted IPC must contain information identical to the information contained on the signed copy of the IPC described in subsection (c) of this section.

(f) DADS may review an IPC at any time to determine if the type and amount of each service specified in the IPC are appropriate. The service coordinator must submit documentation supporting the IPC to DADS in accordance with a request from DADS for documentation.

(g) If an individual's IPC includes only CFC PAS/HAB to be delivered through the CDS option, the service coordinator must include in the IPC:

(1) CFC FMS instead of FMS; and

(2) if the individual will receive support consultation, CFC support consultation instead of support consultation.

§9.567. Process for Enrollment.

(a) DADS notifies a LIDDA, in writing, of the availability of TxHmL Program services in the LIDDA's local service area and directs the LIDDA to offer TxHmL Program services to the applicant:

(1) whose interest list request date, assigned in accordance with §9.566(c)(2) or (d) of this subchapter (relating to TxHmL Interest List), is earliest on the statewide interest list for the TxHmL Program as maintained by DADS;

(2) whose name is not coded in the DADS data system as having been determined ineligible for the TxHmL Program and who is receiving services from the LIDDA that are funded by general revenue

in an amount that would allow DADS to fund the services through the TxHmL Program; or

(3) who is a member of a target group identified in the approved TxHmL waiver application.

(b) Except as provided in subsection (c) of this section, the LIDDA must make the offer of TxHmL Program services in writing and deliver it to the applicant or LAR by regular United States mail or by hand delivery.

(c) A LIDDA must make the offer of TxHmL Program services to an applicant described in subsection (a)(2) or (3) of this section in accordance with DADS procedures.

(d) The LIDDA must include in a written offer that is made in accordance with subsection (a)(1) of this section:

(1) a statement that:

(A) if the applicant or LAR does not respond to the offer of TxHmL Program services within 30 calendar days after the LIDDA's written offer, the LIDDA withdraws the offer of TxHmL Program services; and

(B) if the applicant is currently receiving services from the LIDDA that are funded by general revenue and the applicant or LAR declines the offer of TxHmL Program services, the LIDDA terminates those services that are similar to services provided under the TxHmL Program; and

(2) information regarding the time frame requirements described in subsection (f) of this section using the Deadline Notification form, which is available at www.dads.state.tx.us.

(e) If an applicant or LAR responds to an offer of TxHmL Program services, the LIDDA must:

(1) provide the applicant, LAR, and, if the LAR is not a family member, at least one family member (if possible) both an oral and a written explanation of the services and supports for which the applicant may be eligible, including the ICF/IID Program (both state supported living centers and community-based facilities), waiver programs authorized under §1915(c) of the Social Security Act, and other community-based services and supports using the Explanation of Services and Supports document which is available at www.dads.state.tx.us;

(2) using a DADS form, provide the applicant and LAR both an oral and a written explanation of all TxHmL Program services and CFC services; and

(3) give the applicant or LAR the Verification of Freedom of Choice form, which is available at www.dads.state.tx.us to document the applicant's choice regarding the TxHmL Program and ICF/IID Program.

(f) The LIDDA must withdraw an offer of TxHmL Program services made to an applicant or LAR if:

(1) within 30 calendar days after the LIDDA's offer made to the applicant or LAR in accordance with subsection (a)(1) of this section, the applicant or LAR does not respond to the offer of TxHmL Program services;

(2) within seven calendar days after the applicant or LAR receives the Verification of Freedom of Choice form from the LIDDA in accordance with subsection (e)(2) of this section, the applicant or LAR does not document the choice of TxHmL Program services over the ICF/IID Program using the Verification of Freedom of Choice form;

(3) within 30 calendar days after the applicant or LAR receives the contact information regarding all available program providers in the LIDDA 's local service area in accordance with subsection (n)(1) of this section, the applicant or LAR does not document a choice of a program provider using the Documentation of Provider Choice form; or

(4) the applicant or LAR does not complete the necessary activities to finalize the enrollment process and DADS has approved the withdrawal of the offer.

(g) If the LIDDA withdraws an offer of TxHmL Program services made to an applicant, the LIDDA must notify the applicant or LAR of such action, in writing, by certified United States mail.

(h) If the applicant is currently receiving services from the LIDDA that are funded by general revenue and the applicant declines the offer of TxHmL Program services, the LIDDA must terminate those services that are similar to services provided under the TxHmL Program.

(i) If the LIDDA terminates an applicant's services in accordance with subsection (h) of this section, the LIDDA must notify the applicant or LAR of the termination, in writing, by certified United States mail and provide an opportunity for a review in accordance with §2.46 of this title (relating to Notification and Appeals Process).

(j) The LIDDA must retain in the applicant's record:

(1) the Verification of Freedom of Choice form documenting the applicant's or LAR's choice of services;

(2) the Documentation of Provider Choice form documenting the applicant's or LAR's choice of program provider; and

(3) any correspondence related to the offer of TxHmL Program services.

(k) If an applicant or LAR chooses participation in the TxHmL Program, the LIDDA must compile and maintain information necessary to process the applicant's enrollment in the TxHmL Program.

(1) The LIDDA must complete an ID/RC Assessment.

(A) The LIDDA must:

(i) determine or validate a determination that the applicant has an intellectual disability in accordance with Chapter 5, Subchapter D of this title (relating to Diagnostic Eligibility for Services and Supports--Intellectual Disability Priority Population and Related Conditions); or

(ii) verify that the applicant has been diagnosed by a licensed physician as having a related condition as defined in §9.203 of this chapter (relating to Definitions).

(B) The LIDDA must administer the Inventory for Client and Agency Planning (ICAP) or validate a current ICAP and recommend an LON assignment to DADS in accordance with §9.562 of this subchapter (relating to Level of Need (LON) Assignment).

(2) The LIDDA must:

(A) provide names and contact information to the applicant or LAR regarding all program providers in the LIDDA's local service area;

(B) arrange for meetings or visits with potential program providers as desired by the applicant or the LAR; and

(C) ensure that the applicant's or LAR's choice of a program provider is documented, signed by the applicant or LAR, and retained by the LIDDA in the applicant's record.

(3) The LIDDA must assign a service coordinator who, together with other members of the service planning team, must:

(A) develop a PDP; and

(B) if CFC PAS/HAB is included on the PDP, complete DADS HCS/TxHmL CFC PAS/HAB Assessment form to determine the number of CFC PAS/HAB hours the applicant needs.

(l) The service coordinator must:

(1) in accordance with Chapter 41, Subchapter D of this title (relating to Enrollment, Transfer, Suspension, and Termination):

(A) inform the applicant or LAR of the applicant's right to participate in the CDS option; and

(B) inform the applicant or LAR that the applicant or LAR may choose to have one or more services provided through the CDS option, as described in §41.108 of this title (relating to Services Available Through the CDS Option); and

(2) if the applicant or LAR chooses to participate in the CDS option, comply with §9.583(s) of this subchapter (relating to TxHmL Program Principles for LIDDAs).

(m) The service coordinator must develop a proposed IPC with the applicant or LAR based on the PDP and in accordance with §9.558 of this subchapter (relating to Individual Plan of Care (IPC)).

(n) If an applicant or LAR chooses to receive a TxHmL Program service or CFC service provided by a program provider, the service coordinator must review the proposed IPC with potential program providers selected by the applicant or the LAR.

(o) If transportation as a community support activity is included on the PDP, a transportation plan must be developed by:

(1) the program provider if the individual chooses a program provider to provide transportation as a community support activity; or

(2) the service planning team if the individual chooses to receive transportation as a community support activity through the CDS option.

(p) A service coordinator must:

(1) ensure that the proposed IPC includes a sufficient number of RN nursing units for the program provider's RN to perform an initial nursing assessment, unless, as described in §9.578(q) of this subchapter (relating to Program Provider Certification Principles: Service Delivery):

(A) nursing services are not on the proposed IPC and the applicant or LAR and selected program provider have determined that no nursing tasks will be performed by an unlicensed service provider as documented on DADS form "Nursing Task Screening Tool"; or

(B) a nursing task will be performed by an unlicensed service provider and a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician;

(2) if an applicant or LAR refuses to include a sufficient number of RN nursing units on the proposed IPC for the program provider's RN to perform an initial nursing assessment as required by paragraph (1) of this subsection:

(A) inform the applicant or LAR that the refusal:

(i) will result in the applicant not receiving nursing services from the program provider; and

(ii) if the applicant needs community support, day habilitation, employment assistance, supported employment, respite, or CFC PAS/HAB from the program provider, will result in the applicant not receiving the service unless, as described in §9.578(r) of this subchapter:

(I) the program provider's unlicensed service provider does not perform nursing tasks in the provision of the service; and

(II) the program provider determines that it can ensure the applicant's health, safety, and welfare in the provision of the service; and

(B) document the refusal of the RN nursing units on the proposed IPC for an initial assessment by the program provider's RN in the applicant's record; and

(3) negotiate and finalize the proposed IPC with the selected program provider.

(q) A service coordinator must:

(1) using a DADS form, provide an oral and written explanation to an applicant or LAR of:

(A) the eligibility requirements for TxHmL Program services as described in §9.556(a) of this subchapter (relating to Eligibility Criteria for TxHmL Program Services and CFC Services); and

(B) if the applicant's PDP includes CFC services:

(i) the eligibility requirements for CFC services as described in §9.556(b) of this subchapter to applicants who do not receive MAO Medicaid;

(ii) the eligibility requirements for CFC services as described in §9.556(c) of this subchapter to applicants who receive MAO Medicaid; and

(2) provide an oral and written explanation to the applicant or LAR of:

(A) the reasons TxHmL Program services may be terminated as described in §9.570(a)(1) of this subchapter (relating to Termination and Suspension of TxHmL Program Services and CFC Services); and

(B) if the applicant's PDP includes CFC services, the reasons CFC services may be terminated as described in §9.570(a)(2) of this subchapter.

(r) After the selected program provider agrees to provide the services listed on the IPC, the LIDDA must submit enrollment information, including the completed ID/RC Assessment and the proposed IPC to DADS. DADS notifies the applicant or LAR, the selected program provider and FMSA, if applicable, and the LIDDA of its approval or denial of the applicant's program enrollment based on the eligibility criteria described in §9.556 of this subchapter.

(s) Prior to the applicant's service begin date, the LIDDA must provide to the selected program provider and FMSA, if applicable, copies of all enrollment documentation and associated supporting documentation, including relevant assessment results and recommendations, the completed ID/RC Assessment, the proposed IPC, and the applicant's PDP, and if CFC PAS/HAB is included on the PDP, a copy of the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form.

(t) If a selected program provider initiates services before DADS notification of enrollment approval, the program provider

may not be reimbursed in accordance with §9.573(a)(5)(M) of this subchapter (relating to Reimbursement).

§9.568. Revisions and Renewals of Individual Plans of Care (IPCs), Levels of Care (LOCs), and Levels of Need (LONs) for Enrolled Individuals.

(a) At least annually, and before the expiration of an individual's IPC, the service planning team and the program provider must review the PDP and IPC to determine whether individual outcomes and services previously identified remain relevant.

(1) The service coordinator, in collaboration with the service planning team, initiates revisions to the PDP and the IPC in response to changes in the individual's needs and identified outcomes.

(2) If CFC PAS/HAB is included on the PDP, the service planning team must complete DADS HCS/TxHmL CFC PAS/HAB Assessment form to determine the number of CFC PAS/HAB hours the individual needs:

(A) at least annually and before the expiration of the individual's IPC; and

(B) if the IPC needs to be revised to add CFC PAS/HAB or change the amount of CFC PAS/HAB.

(3) The service coordinator must electronically transmit annual renewals and necessary revisions of the IPC to DADS for approval and retain documentation as described in §9.567 of this subchapter (relating to Process for Enrollment) and §9.558 of this subchapter (relating to Individual Plan of Care (IPC)).

(4) The service coordinator must send the program provider and FMSA, if applicable, a copy of:

(A) the revised PDP;

(B) the current IPC; and

(C) if CFC PAS/HAB is included on the PDP, the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form.

(b) The service coordinator must electronically transmit annual evaluations of LOC or revisions of LOC to DADS for approval in accordance with §9.560 of this subchapter (relating to Level of Care (LOC) Determination).

(c) A LIDDA must re-administer the ICAP to an individual in accordance with paragraph (1) of this subsection and must electronically transmit an ID/RC Assessment to DADS recommending a revision of the individual's LON assignment if the ICAP results indicate a change of the individual's LON assignment may be appropriate.

(1) The ICAP must be re-administered three years after an individual's enrollment and every third year thereafter unless, before that date:

(A) changes in the individual's functional skills or behavior occur that are not expected to be of short duration or cyclical in nature; or

(B) the individual's skills and behavior are inconsistent with the individual's assigned LON.

(2) As appropriate, the service coordinator must submit supporting documentation to DADS in accordance with §9.563 of this subchapter (relating to DADS Review of Level of Need (LON)).

(3) A LIDDA must retain in the individual's record results and recommendations of individualized assessments and other pertinent records documenting the recommended LON assignment.

(d) If an individual or LAR requests support management during an IPC year, the service coordinator or the program provider must revise the IPC as described in the HCS Handbook available at www.dads.state.tx.us.

§9.578. Program Provider Certification Principles: Service Delivery.

(a) A program provider must serve an eligible applicant or individual who selects the program provider unless the program provider's enrollment has reached its service capacity as identified in the DADS data system.

(b) The program provider must maintain a separate record for each individual enrolled with the provider. The individual's record must include:

(1) a copy of the individual's current PDP and, if CFC PAS/HAB is included on the PDP, a copy of the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form as provided by the LIDDA;

(2) a copy of the individual's current IPC as provided by the LIDDA; and

(3) a copy of the individual's current ID/RC Assessment as provided by the LIDDA.

(c) The program provider must:

(1) participate as a member of the service planning team, if requested by the individual or LAR;

(2) develop:

(A) in conjunction with the individual, the individual's family or LAR, an implementation plan for:

(i) TxHmL Program services, except for transportation as a community support activity; and

(ii) CFC services, except for CFC support management; and

(B) a transportation plan, if transportation as a community support activity is included on the PDP.

(d) The program provider must provide:

(1) TxHmL Program services in accordance with an individual's PDP, IPC, implementation plan, transportation plan, §9.555 of this subchapter (relating to Description of TxHmL Program Services), and Appendix C of the TxHmL Program waiver application approved by CMS and found at www.dads.state.tx.us; and

(2) CFC services in accordance with an individual's PDP, IPC, and implementation plan.

(e) The program provider must ensure that services and supports provided to an individual assist the individual to achieve the outcomes identified in the PDP.

(f) The program provider must ensure that an individual's progress or lack of progress toward achieving the individual's identified outcomes is documented in observable, measurable terms that directly relate to the specific outcome addressed, and that such documentation is available for review by the service coordinator.

(g) The program provider must communicate to the individual's service coordinator changes needed to the individual's PDP or IPC as such changes are identified by the program provider or communicated to the program provider by the individual or LAR.

(h) The program provider must ensure that an individual who performs work for the program provider is paid at a wage level com-

mensurate with that paid to a person without disabilities who would otherwise perform that work. The program provider must comply with local, state, and federal employment laws and regulations.

(i) The program provider must ensure that an individual provides no training, supervision, or care to another individual unless the individual is qualified and compensated in accordance with local, state, and federal regulations.

(j) The program provider must ensure that an individual who produces marketable goods and services during habilitation activities is paid at a wage level commensurate with that paid to a person without disabilities who would otherwise perform that work. Compensation must be paid in accordance with local, state, and federal regulations.

(k) The program provider must offer an individual opportunity for leisure time activities, vacation periods, religious observances, holidays, and days off, consistent with the individual's choice and the routines of other members of the community.

(l) The program provider must offer an individual of retirement age opportunities to participate in activities appropriate to individuals of the same age and provide supports necessary for the individual to participate in such activities consistent with the individual's or LAR's choice and the individual's PDP.

(m) The program provider must offer an individual choices and opportunities for accessing and participating in community activities including employment opportunities and experiences available to peers without disabilities and provide supports necessary for the individual to participate in such activities consistent with an individual's or LAR's choice and the individual's PDP.

(n) A program provider must develop a written service backup plan for a TxHmL Program service or a CFC service identified on the PDP as critical to meeting an individual's health and safety.

(1) A service backup plan must:

(A) contain the name of the service;

(B) specify the period of time in which an interruption to the service would result in an adverse effect to the individual's health or safety; and

(C) in the event of a service interruption resulting in an adverse effect as described in subparagraph (B) of this paragraph, describe the actions the program provider will take to ensure the individual's health and safety.

(2) A program provider must ensure that:

(A) if the action in the service backup plan required by paragraph (1) of this subsection identifies a natural support, that the natural support receives pertinent information about the individual's needs and is able to protect the individual's health and safety; and

(B) a person identified in the service backup plan, if paid to provide the service, meets the qualifications described in this subchapter.

(3) If a service backup plan is implemented, a program provider must:

(A) discuss the implementation of the service backup plan with the individual and the service providers or natural supports identified in the service backup plan to determine whether or not the plan was effective;

(B) document whether or not the plan was effective; and

(C) revise the plan if the program provider determines the plan was ineffective.

(o) If respite is provided in a location other than an individual's family home, the location must be acceptable to the individual or LAR and provide an accessible, safe, and comfortable environment for the individual that promotes the health and welfare of the individual.

(1) Respite may be provided in the residence of another individual receiving TxHmL Program services or similar services if the program provider has obtained written approval from the individuals living in the residence or their LARs and:

(A) no more than three individuals receiving TxHmL Program services or CFC services and other persons receiving similar services are provided services at any one time; or

(B) no more than four individuals receiving TxHmL Program services or CFC services and other persons receiving similar services are provided services in the residence at any one time and the residence is approved in accordance with §9.188 of this chapter (relating to DADS Approval of Residences).

(2) Respite may be provided in a respite facility if the program provider provides or intends to provide respite to more than three individuals receiving TxHmL Program services or CFC services or persons receiving similar services at the same time; and

(A) the program provider has obtained written approval from the local fire authority having jurisdiction stating that the facility and its operation meet the local fire ordinances; and

(B) the program provider obtains such written approval from the local fire authority having jurisdiction on an annual basis.

(3) If respite is provided in a camp setting, the program provider must ensure the camp is accredited by the American Camp Association.

(4) Respite must not be provided in an institution such as an ICF/IID, nursing facility, or hospital.

(p) The program provider must ensure that nursing is provided in accordance with:

(1) Texas Occupations Code, Chapter 301 (Nursing Practice Act);

(2) 22 TAC Chapter 217 (relating to Licensure, Peer Assistance, and Practice);

(3) 22 TAC Chapter 224 (relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments); and

(4) 22 TAC Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions).

(q) A program provider may determine that an individual does not require a nursing assessment if:

(1) nursing services are not on the individual's IPC and the program provider has determined that no nursing task will be performed by the program provider's unlicensed service provider as documented on DADS form "Nursing Task Screening Tool"; or

(2) a nursing task will be performed by the program provider's unlicensed service provider and a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician.

(r) If an individual or LAR refuses a nursing assessment described in §9.555(c)(10)(A) of this subchapter, the program provider must not:

(1) provide nursing services to the individual; or

(2) provide community support, day habilitation, employment assistance, supported employment, respite, or CFC PAS/HAB to the individual unless:

(A) an unlicensed service provider does not perform nursing tasks in the provision of the service; and

(B) the program provider determines that it can ensure the individual's health, safety, and welfare in the provision of the service.

(s) If an individual or LAR refuses a nursing assessment and the program provider determines that the program provider cannot ensure the individual's health, safety, and welfare in the provision of a service as described in subsection (r) of this section, the program provider must:

(1) immediately notify the individual or LAR and the individual's service coordinator, in writing, of the determination; and

(2) include in the notification required by paragraph (1) of this subsection the reasons for the determination and the services affected by the determination.

(t) If notified by the service coordinator that the individual or LAR refuses the nursing assessment after the discussion with the service coordinator as described in §9.583(j)(6) of this subchapter (relating to TxHmL Program Principles for LIDDAs), the program provider must immediately send the written notification described in subsection (s) of this section to DADS.

(u) The program provider must, if a physician delegates a medical act to an unlicensed service provider in accordance with Texas Occupations Code, Chapter 157, and the program provider has concerns about the health or safety of the individual in performance of the medical act, communicate the concern to the delegating physician and take additional steps as necessary to ensure the health and safety of the individual.

(v) The program provider must:

(1) for an applicant 21 years of age or older residing in a nursing facility who is enrolling in the TxHmL Program:

(A) participate as a member of the service planning team, which includes attending service planning team meetings scheduled by the service coordinator;

(B) assist in the implementation of the applicant's transition plan as described in the plan; and

(C) be physically present for the pre-move site review and assist the service coordinator during the review as requested; and

(2) for 365 calendar days after an individual 21 years of age or older has enrolled in the TxHmL Program from a nursing facility or has enrolled in the TxHmL Program as a diversion from admission to a nursing facility:

(A) be physically present for each post-move monitoring visit and assist the service coordinator during the visit as requested;

(B) assist in the implementation of the individual's transition plan as described in the plan;

(C) participate as a member of the service planning team, which includes attending service planning team meetings scheduled by the service coordinator; and

(D) within one calendar day after becoming aware of an event or condition that may put the individual at risk of admission or readmission to a nursing facility, notify the service planning team of the event or condition.

(w) A program provider must ensure that CFC PAS/HAB is provided in accordance with the individual's PDP, IPC, and implementation plan.

(x) CFC ERS must be provided in accordance with this subsection.

(1) A program provider must ensure that CFC ERS is provided only to an individual who:

(A) lives alone, who is alone for significant parts of the day, or has no regular caregiver for extended periods of time; and

(B) would otherwise require extensive routine supervision.

(2) A program provider must ensure that CFC ERS is provided in accordance with the individual's PDP, IPC, and implementation plan.

(3) A program provider must ensure that CFC ERS equipment is installed within 14 business days after one of the following dates, whichever is later:

(A) the date DADS authorizes the proposed IPC that includes CFC ERS; or

(B) the effective date of the individual's IPC as determined by the service planning team.

(4) At the time CFC ERS equipment is installed, a program provider must ensure that:

(A) the equipment is installed in accordance with the manufacturer's installation instructions;

(B) an initial test of the equipment is made;

(C) the equipment has an alternate power source in the event of a power failure;

(D) the individual is trained on the use of the equipment, including:

(i) demonstrating how the equipment works; and

(ii) having the individual activate an alarm call;

(E) an explanation is given to the individual that the individual must:

(i) participate in a system check each month; and

(ii) contact the CFC ERS provider if:

(I) the individual's telephone number or address changes; or

(II) one or more of the individual's responders change; and

(F) the individual is informed that a responder, in response to an alarm call, may forcibly enter the individual's home if necessary.

(5) A program provider must ensure that the date and time of the CFC ERS equipment installation and compliance with the requirements in paragraphs (4) and (5) of this subsection are documented in the individual's record.

(6) A program provider must ensure that, on or before the date CFC ERS equipment is installed:

(A) an attempt is made to obtain from an individual, the names and telephone numbers of at least two responders, such as a relative or neighbor;

(B) public emergency personnel:

(i) is designated as a second responder if the individual provides the name of only one responder; or

(ii) is designated as the sole responder if the individual does not provide the names of any responders; and

(C) the name and telephone number of each responder is documented in the individual's record.

(7) At least once during each calendar month a program provider must ensure that a system check is conducted on a date and time agreed to by the individual.

(8) A program provider must ensure that the date, time, and result of the system check is documented in the individual's record.

(9) If, as a result of the system check:

(A) the equipment is working properly but the individual is unable to successfully activate an alarm call, the program provider must ensure that a request is made of the service coordinator to convene a service planning team meeting to determine if CFC ERS meets the individual's needs; or

(B) the equipment is not working properly, the program provider must ensure that, within three calendar days of the system check, the equipment is repaired or replaced.

(10) If a system check is not conducted in accordance with paragraph (7) of this subsection, the program provider must ensure that:

(A) the failure to comply is because of good cause; and

(B) the good cause is documented in the individual's record.

(11) A program provider must ensure that an alarm call is responded to 24 hours a day, seven days a week.

(12) A program provider must ensure that, if an alarm call is made, the CFC ERS provider:

(A) within 60 seconds of the alarm call, attempts to contact the individual to determine if an emergency exists;

(B) immediately contacts a responder, if as a result of attempting to contact the individual:

(i) the CFC ERS provider confirms there is an emergency; or

(ii) the CFC ERS provider is unable to communicate with the individual; and

(C) documents the following information in the individual's record when the information becomes available:

(i) the name of the individual;

(ii) the date and time of the alarm call, recorded in hours, minutes, and seconds;

(iii) the response time, recorded in seconds;

(iv) the time the individual is called in response to the alarm call, recorded in hours, minutes, and seconds;

(v) the name of the contacted responder, if applicable;

(vi) a brief description of the reason for the alarm call; and

(vii) if the reason for the alarm call is an emergency, a statement of how the emergency was resolved.

(13) If an alarm call results in a responder being dispatched to the individual's home for an emergency, the program provider must ensure that:

(A) the service coordinator receives written notice of the alarm call within one business day after the alarm call;

(B) if the CFC ERS provider is a contracted provider, the program provider receives written notice from the contracted provider within one business day after the alarm call; and

(C) written notices required by subparagraphs (A) and (B) of this paragraph is maintained in the individual's record.

(14) A program provider must ensure that, if an equipment failure occurs, other than during a system check required by paragraph (7) of this subsection:

(A) the individual is informed of the equipment failure; and

(B) the equipment is replaced within one business day after the failure becomes known by the CFC ERS provider.

(15) If an individual is not informed of the equipment failure and the equipment is not replaced in compliance with paragraph (14) of this subsection, the program provider must ensure that:

(A) the failure to comply is because of good cause; and

(B) as soon as possible, the individual is informed of the equipment failure and the equipment is replaced.

(16) A program provider must ensure that, if the CFC ERS equipment registers five or more "low battery" signals in a 72-hour period:

(A) a visit to an individual's home is made to conduct a system check within five business days after the low battery signals occur; and

(B) if the battery is defective, the battery is replaced during the visit.

(17) A program provider must ensure that, if a system check or battery replacement is not made in accordance with paragraph (16) of this subsection:

(A) the failure to comply is because of good cause; and

(B) as soon as possible, a system check and battery replacement is made.

(18) A program provider must ensure that the following information is documented in an individual's record:

(A) the date the equipment failure or low battery signal became known by the CFC ERS provider;

(B) the equipment or subscriber number;

(C) a description of the problem;

(D) the date the equipment or battery was repaired or replaced; and

(E) the good cause for failure to comply as described in paragraphs (15)(A) and (17)(A) of this subsection.

(y) A program provider must ensure that CFC support management is provided to an individual or LAR if:

(1) the individual is receiving CFC PAS/HAB; and

(2) the individual or LAR requests to receive CFC support management.

§9.579. Certification Principles: Qualified Personnel.

(a) The program provider must ensure the continuous availability of trained and qualified employees and contractors to provide the services in an individual's IPC.

(b) The program provider must comply with applicable laws and regulations to ensure that:

(1) its operations meet necessary requirements; and

(2) its employees or contractors possess legally necessary licenses, certifications, registrations, or other credentials and are in good standing with the appropriate professional agency before performing any function or delivering services.

(c) The program provider must employ or contract with a service provider of the individual's or LAR's choice to provide a TxHmL Program service or a CFC service if that service provider:

(1) is qualified to provide the service;

(2) unless the program provider agrees to pay a higher amount, provides the service at or below:

(A) for any service except CFC ERS, the direct services portion of the applicable TxHmL Program rate; and

(B) for CFC ERS, the reimbursement rate; and

(3) contracts with or is employed by the program provider.

(d) The program provider must:

(1) conduct initial and periodic training that ensures:

(A) staff members and service providers are trained and qualified to deliver services as required by the current needs and characteristics of the individual to whom they deliver services; and

(B) staff members, service providers, and volunteers are knowledgeable about the information described in §49.310(3)(A) of this title (relating to Abuse, Neglect, and Exploitation Allegations); and

(2) ensure that a staff member who participates in developing an implementation plan for CFC PAS/HAB completes person-centered service planning training approved by HHSC:

(A) by June 1, 2017, if the staff member was hired on or before June 1, 2015; or

(B) within two years after hire, if the staff member was hired after June 1, 2015.

(e) The program provider must implement and maintain personnel practices that safeguard an individual against infectious and communicable diseases.

(f) The program provider must prevent:

(1) conflicts of interest between program provider personnel and an individual;

(2) financial impropriety toward an individual;

(3) abuse, neglect, or exploitation of an individual; and

(4) threats of harm or danger toward an individual's possessions.

(g) The program provider must employ or contract with a person who oversees the provision of TxHmL Program services and CFC services to an individual. The person must:

(1) have at least three years paid work experience in planning and providing TxHmL Program services or CFC services to an individual with an intellectual disability or related condition as verified by written statements from the person's employer; or

(2) have both of the following:

(A) at least three years of experience planning and providing services similar to TxHmL Program services or CFC services to a person with an intellectual disability or related condition as verified by written statements from organizations or agencies that provided services to the person; and

(B) participation as a member of a microboard, as verified in writing by:

(i) the certificate of formation of the non-profit corporation under which the microboard operates filed with the Texas Secretary of State;

(ii) the bylaws of the non-profit corporation; and

(iii) a statement by the board of directors of the non-profit corporation that the person is a member of the microboard.

(h) The program provider must ensure that a service provider of community support, day habilitation, or respite is at least 18 years of age and:

(1) has a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma; or

(2) has documentation of a proficiency evaluation of experience and competence to perform the job tasks that includes:

(A) written competency-based assessment of the ability to document service delivery and observations of an individual to be served; and

(B) at least three written personal references from persons not related by blood that indicate the ability to provide a safe, healthy environment for an individual being served.

(i) The program provider must ensure that a service provider of employment assistance or a service provider of supported employment:

(1) is at least 18 years of age;

(2) is not:

(A) the spouse of the individual; or

(B) a parent of the individual if the individual is a minor; and

(3) has:

(A) a bachelor's degree in rehabilitation, business, marketing, or a related human services field, and at least six months of paid or unpaid experience providing services to people with disabilities;

(B) an associate's degree in rehabilitation, business, marketing, or a related human services field, and at least one year of paid or unpaid experience providing services to people with disabilities; or

(C) a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma, and at least two years of paid or unpaid experience providing services to people with disabilities.

(j) A program provider must ensure that the experience required by subsection (i) of this section is evidenced by:

(1) for paid experience, a written statement from a person who paid for the service or supervised the provision of the service; and

(2) for unpaid experience, a written statement from a person who has personal knowledge of the experience.

(k) The program provider must ensure that a service provider who provides transportation:

(1) has a valid driver's license; and

(2) transports individuals in a vehicle insured in accordance with state law.

(l) The program provider must ensure that dental treatment is provided by a dentist licensed in accordance with Texas Occupations Code, Chapter 256.

(m) The program provider must ensure that nursing is provided by an RN or an LVN.

(n) The program provider must ensure that adaptive aids meet applicable standards of manufacture, design, and installation.

(o) The program provider must ensure that a service provider of behavioral support:

(1) meets one of the following:

(A) is licensed as a psychologist in accordance with Texas Occupations Code, Chapter 501;

(B) is licensed as a psychological associate in accordance with Texas Occupations Code, Chapter 501;

(C) is certified by DADS as described in §5.161 of this title (relating to Certified Authorized Provider);

(D) is certified as a behavior analyst by the Behavior Analyst Certification Board, Inc.;

(E) has been issued a provisional license to practice psychology in accordance with Texas Occupations Code, Chapter 501;

(F) is licensed as a licensed clinical social worker in accordance with Texas Occupations Code, Chapter 505; or

(G) is licensed as a licensed professional counselor in accordance with Texas Occupations Code, Chapter 503; and

(2) completes the web-based DADS HCS and TxHmL Behavioral Support Services Provider Policy Training available at www.dads.state.tx.us:

(A) before providing behavioral support services;

(B) within 90 calendar days after the date DADS issues notice to program providers that DADS revised the web-based training; and

(C) within three years after the most recent date of completion.

(p) The program provider must ensure that minor home modifications are delivered by contractors who provide the service in accordance with state and local building codes and other applicable regulations.

(q) The program provider must ensure that a provider of professional therapies is licensed for the specific therapeutic service provided as follows:

(1) for audiology services, an audiologist licensed in accordance with Texas Occupations Code, Chapter 401;

(2) for speech and language pathology services, a speech-language pathologist or licensed assistant in speech-language pathology licensed in accordance with Texas Occupations Code, Chapter 401;

(3) for occupational therapy services, an occupational therapist or occupational therapy assistant licensed in accordance with Texas Occupations Code, Chapter 454;

(4) for physical therapy services, a physical therapist or physical therapist assistant licensed in accordance with Texas Occupations Code, Chapter 453;

(5) for dietary services, a licensed dietitian licensed in accordance with Texas Occupations Code, Chapter 701; and

(6) for social work services, a social worker licensed in accordance with Texas Occupations Code, Chapter 505.

(r) The program provider must comply with §49.304 of this title (relating to Background Checks).

(s) A program provider must comply with §49.312(a) of this title (relating to Personal Attendants).

(t) If the service provider of community support or CFC PAS/HAB is employed by or contracts with a contractor of a program provider, the program provider must ensure that the contractor complies with subsection (s) of this section as if the contractor were the program provider.

(u) A program provider must:

(1) ensure that a service provider of CFC PAS/HAB:

(A) is at least 18 years of age;

(B) has:

(i) a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma; or

(ii) documentation of a proficiency evaluation of experience and competence to perform the job tasks that includes:

(I) a written competency-based assessment of the ability to document service delivery and observations of the individuals to be served; and

(II) at least three written personal references from persons not related by blood that indicate the ability to provide a safe, healthy environment for the individuals being served;

(C) is not:

(i) the spouse of the individual; or

(ii) a parent of the individual if the individual is a minor; and

(D) meets any other qualifications requested by the individual or LAR based on the individual's needs and preferences; and

(2) if requested by an individual or LAR:

(A) allow the individual or LAR to train a CFC PAS/HAB service provider in the specific assistance needed by the individual and to have the service provider perform CFC PAS/HAB in a manner that comports with the individual's personal, cultural, or religious preferences; and

(B) ensure that a CFC PAS/HAB service provider attends training by HHSC or DADS so the service provider meets any additional qualifications desired by the individual or LAR.

§9.583. TxHmL Program Principles for LIDDAs.

(a) A LIDDA must offer TxHmL Program services to an applicant in accordance with §9.567 of this subchapter (relating to Process for Enrollment).

(b) A LIDDA must process enrollments in the TxHmL Program in accordance with §9.567 of this subchapter.

(c) A LIDDA must have a mechanism to ensure objectivity in the process to assist an individual or LAR in the selection of a program provider and a system for training all LIDDA staff who may assist an individual or LAR in such process.

(d) A LIDDA must ensure that an individual or LAR is informed orally and in writing of the processes for filing complaints as follows:

(1) the telephone number of the LIDDA to file a complaint;

(2) the toll-free telephone number of DADS to file a complaint; and

(3) the toll-free telephone number of DFPS (1-800-647-7418) to report an allegation of abuse, neglect, or exploitation.

(e) A LIDDA must maintain for each individual for an IPC year:

(1) a copy of the IPC;

(2) the PDP and, if CFC PAS/HAB is included on the PDP, the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form;

(3) a copy of the ID/RC Assessment;

(4) documentation of the activities performed by the service coordinator in providing service coordination; and

(5) any other pertinent information related to the individual.

(f) For an individual receiving TxHmL Program services and CFC services within a LIDDA's local service area, the LIDDA must provide the individual's program provider a copy of the individual's current PDP, IPC, and ID/RC Assessment.

(g) A LIDDA must employ service coordinators who:

(1) meet the minimum qualifications and staff training requirements specified in Chapter 2, Subchapter L of this title (relating to Service Coordination for Individuals with an Intellectual Disability); and

(2) have received training about:

(A) the TxHmL Program and CFC, including:

(i) the requirements of this subchapter;

(ii) the CFC services as described in §9.554 of this subchapter (relating to Description of the TxHmL Program and CFC); and

(iii) the TxHmL Program services as described in §9.555 of this subchapter (relating to Description of TxHmL Program Services); and

(B) Chapter 41 of this title (relating to Consumer Directed Services Option).

(h) A LIDDA must ensure that a service coordinator:

(1) initiates, coordinates, and facilitates the person-directed planning process to meet the desires and needs as identified by an individual and LAR in the individual's PDP, including:

(A) scheduling service planning team meetings; and

(B) documenting on the PDP whether, for each TxHmL Program service or CFC service identified on the PDP, the service is critical to meeting the individual's health and safety as determined by the service planning team;

(2) coordinates the development and implementation of the individual's PDP;

(3) coordinates and develops an individual's IPC based on the individual's PDP;

(4) coordinates and monitors the delivery of TxHmL Program services and CFC services and non-TxHmL Program and non-CFC services;

(5) records each individual's progress; and

(6) develops a plan required by §9.570(c)(2) of this subchapter (relating to Termination and Suspension of TxHmL Program Services) that addresses assistance for the individual after termination of the individual's TxHmL Program services and CFC services.

(i) A LIDDA must ensure that an individual or LAR is informed of the name of the individual's service coordinator and how to contact the service coordinator.

(j) A service coordinator must:

(1) assist the individual or LAR in exercising the legal rights of the individual as a citizen and as a person with a disability;

(2) assist the individual's LAR or family members to encourage the individual to exercise the individual's rights;

(3) ensure that the individual and LAR participate in developing a personalized PDP and IPC that meet the individual's identified needs and service outcomes and that the individual's PDP is updated when the individual's needs or outcomes change but not less than annually;

(4) ensure that a restriction affecting the individual is approved by the individual's service planning team before the imposition of the restriction;

(5) if notified by the program provider that an individual or LAR has refused a nursing assessment and that the program provider has determined that it cannot ensure the individual's health, safety, and welfare in the provision of a service as described in §9.578(s) of this subchapter (relating to Program Provider Certification Principles: Service Delivery):

(A) inform the individual or LAR of the consequences and risks of refusing the assessment, including that the refusal will result in the individual not receiving:

(i) nursing services; or

(ii) community support, day habilitation, employment assistance, supported employment, respite, or CFC PAS/HAB, if the individual needs one of those services and the program provider has determined that it cannot ensure the health, safety, and welfare of the individual in the provision of the service; and

(B) notify the program provider if the individual or LAR continues to refuse the assessment after the discussion with the service coordinator;

(6) ensure that the individual or LAR is informed of decisions regarding denial or termination of services and the individual's or LAR's right to request a fair hearing as described in §9.571 of this subchapter (relating to Fair Hearings);

(7) ensure that, if needed, the individual or LAR participates in developing a plan required by §9.570(c)(2) of this subchapter that addresses assistance for the individual after termination of the individual's TxHmL Program services; and

(8) in accordance with DADS instructions, manage the process to transfer an individual's TxHmL Program services and CFC services from one program provider to another or transfer from one FMSA to another, including:

(A) informing the individual or LAR who requests a transfer to another program provider or FMSA that the service coordinator will manage the transfer process;

(B) informing the individual or LAR that the individual or LAR may choose:

(i) to receive TxHmL Program services and CFC services from any program provider that is in the geographic location preferred by the individual or LAR and whose enrollment has not reached its service capacity in the DADS data system; or

(ii) to transfer to any FMSA in the geographic location preferred by the individual or LAR; and

(C) if the individual or LAR has not selected another program provider or FMSA, providing the individual or LAR with a list of and contact information for TxHmL Program providers and FMSAs in the geographic location preferred by the individual or LAR.

(k) When a change to an individual's PDP or IPC is indicated, the service coordinator must discuss the need for the change with the individual or LAR, the individual's program provider, and other appropriate persons as necessary.

(l) At least 30 calendar days before the expiration of an individual's IPC, the service coordinator must:

(1) update the individual's PDP in conjunction with the individual's service planning team; and

(2) if the individual receives a TxHmL Program service or a CFC service from a program provider, submit to the program provider:

(A) the updated PDP; and

(B) if CFC PAS/HAB is included on the PDP, a copy of the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form

(m) A service coordinator must:

(1) review the status of an individual whose services have been suspended at least every 90 calendar days following the effective date of the suspension and document in the individual's record the reasons for continuing the suspension; and

(2) if the suspension continues 270 calendar days, submit written documentation of the 90, 180, and 270 calendar day reviews to DADS for review and approval to continue the suspension status.

(n) A service coordinator must:

(1) inform the individual or LAR orally and in writing, of the requirements described in subsection (j) of this section:

(A) upon receipt of DADS approval of the enrollment of the individual;

(B) if the requirements described in subsection (j) of this section are revised;

(C) at the request of the individual or LAR; and

(D) if the legal status of the individual changes; and

(2) document that the information described in paragraph (1) of this subsection was provided to the individual or LAR.

(o) A service coordinator must conduct:

(1) a pre-move site review for an applicant 21 years of age or older who is enrolling in the TxHmL Program from a nursing facility; and

(2) post-move monitoring visits for an individual 21 years of age or older who enrolled in the TxHmL Program from a nursing facility or has enrolled in the TxHmL Program as a diversion from admission to a nursing facility.

(p) A service coordinator must have a face-to-face contact with an individual to provide service coordination during a month in which it is anticipated that the individual will not receive a TxHmL Program service unless:

(1) the individual's TxHmL Program services have been suspended; or

(2) the service coordinator had a face-to-face contact with the individual that month to comply with §2.556(d) of this title (relating to MRA's Responsibilities).

(q) In addition to the requirements described in Chapter 2, Subchapter L of this title (relating to Service Coordination for Individuals with an Intellectual Disability), a LIDDA must, in the provision of service coordination in the TxHmL Program, ensure compliance with the requirements in this subchapter and Chapter 41 of this title.

(r) A service coordinator must:

(1) at least annually, in accordance with Chapter 41, Subchapter D of this title (relating to Enrollment, Transfer, Suspension, and Termination):

(A) inform the individual or LAR of the individual's right to participate in the CDS option; and

(B) inform the individual or LAR that the individual or LAR may choose to have one or more services provided through the CDS option, as described in §41.108 of this title (relating to Services Available Through the CDS Option); and

(2) document compliance with paragraph (1) of this subsection in the individual's record.

(s) If an individual or LAR chooses to participate in the CDS option, the service coordinator must:

(1) provide names and contact information to the individual or LAR regarding all FMSAs providing services in the LIDDA's local service area;

(2) document the individual's or LAR's choice of FMSA on Form 1584;

(3) document, in the individual's PDP, a description of the services provided through the CDS option;

(4) document, in the individual's PDP, a description of the individual's service backup plan; and

(5) ensure the service planning team develops a transportation plan if an individual's PDP includes transportation as a community support activity to be delivered through the CDS option.

(t) For an individual participating in the CDS option, the LIDDA must recommend to DADS that FMS and support consultation, if applicable, be terminated if the service coordinator determines that:

(1) the individual's continued participation in the CDS option poses a significant risk to the individual's health, safety or welfare; or

(2) the individual or LAR has not complied with Chapter 41, Subchapter B of this title (relating to Responsibilities of Employers and Designated Representatives).

(u) If a LIDDA makes a recommendation under subsection (t) of this section, the local authority must:

(1) electronically transmit the individual's IPC to DADS; and

(2) in accordance with Chapter 41, Subchapter D of this title, submit documentation required by DADS in writing, to the Department of Aging and Disability Services, Access and Intake, Program Enrollment, P.O. Box 149030, Mail Code W-551, Austin, Texas 78714-9030.

(v) At least annually, a service coordinator must:

(1) using a DADS form, provide an oral and written explanation to an individual or LAR of:

(A) the eligibility requirements for TxHmL Program services as described in §9.556(a) of this subchapter (relating to Eligibility Criteria for TxHmL Program Services and CFC Services); and

(B) if the individual 's PDP includes CFC services:

(i) the eligibility requirements for CFC services as described in §9.556(b) of this subchapter to individuals who do not receive MAO Medicaid; and

(ii) the eligibility requirements for CFC services as described in §9.556(c) of this subchapter to individuals who receive MAO Medicaid;

(2) using a DADS form, provide an oral and written explanation to an individual or LAR of all TxHmL Program services and CFC services; and

(3) using a DADS form, provide an oral and written explanation to an individual or LAR of:

(A) the reasons an individual's TxHmL Program services may be terminated as described in §9.570(a)(1) of this subchapter (relating to Termination and Suspension of TxHmL Program Services and CFC Services); and

(B) if the individual's PDP includes CFC services, the reasons CFC services may be terminated as described in §9.570(a)(2) of this subchapter.

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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Lawrence Hornsby
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CHAPTER 18. NURSING FACILITY ADMINISTRATORS

SUBCHAPTER A. GENERAL INFORMATION

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), the repeal of §18.3, in Subchapter A, General Information, in Chapter 18, Nursing Facility Administrators, without changes to the proposed text as published in the December 11, 2015, issue of the *Texas Register* (40 TexReg 8876). An amendment to §18.2 is adopted with changes to the proposed text.

The purpose of the amendment and repeal is, along with Chapter 89, to implement §531.012 of the Texas Government Code, as amended by Senate Bill 200 of the 84th Legislature, Regular Session, 2015. Section 531.012 requires the executive commissioner of the Texas Health and Human Services Commission to establish and maintain advisory committees to solicit input from the public to address key issues of concern across the health and human services system. Section 531.012 also requires the executive commissioner to adopt rules to govern advisory committees in compliance with Texas Government Code, Chapter 2110, and to address topics specified in §531.012. The adoption amends the definition of "Nursing Facility Administrators Advisory Committee" (NFAAC) to reference new §89.6, and repeals §18.3, which describes the NFAAC.

A change was made to the order of defined terms in §18.2 to put them in alphabetical order.

DADS received no comments regarding adoption of the amendments and repeal.

40 TAC §18.2

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.012, which authorizes the executive commissioner to establish and maintain advisory committees.

§18.2. Definitions.

The words and terms in this chapter have the following meanings, unless the context clearly indicates otherwise:

(1) Abuse--Any act, failure to act, or incitement to act done willfully, knowingly, or recklessly through words or physical action that causes or could cause mental or physical injury or harm or death to a nursing facility resident. Abuse includes verbal, sexual, mental, psychological, or physical abuse; corporal punishment; involuntary seclusion; or any other actions within this definition.

(2) Administrative law judge (ALJ)--A State Office of Administrative Hearings (SOAH) attorney who conducts formal hearings for the Department of Aging and Disability Services.

(3) Administrator--A licensed nursing facility administrator.

(4) Administrator-in-training (AIT)--A person undergoing a minimum 1,000-hour internship under a DADS-approved certified preceptor.

(5) Administrator of Record--The individual who is listed as the facility's licensed nursing facility administrator with the DADS' Licensing and Credentialing Section.

(6) Applicant--A person applying for a Texas nursing facility administrator license.

(7) Application--The notarized DADS application for licensure as a nursing facility administrator, as well as all required forms, fees, and supporting documentation.

(8) Complaint--An allegation that a licensed nursing facility administrator violated one or more of the licensure rules or statutory requirements.

(9) DADS--The Department of Aging and Disability Services.

(10) Deficiency--Violation of a federal participation requirement in a nursing facility.

(11) Domains of the NAB--The five categories for education and continuing education of the National Association of Long Term Care Administrator Boards, which are resident care and quality of life; human resources; finance; physical environment and atmosphere; and leadership and management.

(12) Equivalent--A level of achievement that is equal in amount and quality to completion of an educational or training program.

(13) Formal hearing--A hearing held by SOAH to adjudicate a sanction taken by DADS against a licensed nursing facility administrator.

(14) Good standing--The licensure status of a nursing facility administrator who is in compliance with the rules in this chapter and, if applicable, the terms of any sanction imposed by DADS.

(15) Informal review--The opportunity for a licensee to dispute the allegations made by DADS. The informal review includes the opportunity to show compliance.

(16) Internship--The 1,000-hour training period in a nursing facility for an AIT.

(17) License--A nursing facility administrator license or provisional license.

(18) Licensee--A person licensed by DADS as a nursing facility administrator.

(19) Misappropriation of resident property--The deliberate misplacement, exploitation, or wrongful temporary or permanent use of a nursing facility resident's belongings or money without the resident's consent.

(20) NAB--The National Association of Long Term Care Administrator Boards, which is composed of state boards or agencies responsible for the licensure of nursing facility administrators.

(21) NAB examination--The national examination developed by NAB that applicants must pass in combination with the state licensure examination to be issued a license to practice nursing facility administration in Texas.

(22) NCERS--The National Continuing Education Review Service, which is the part of NAB that approves and monitors continuing education activities for nursing facility administrators.

(23) Neglect--A deprivation of life's necessities of food, water, or shelter; or a failure of an individual to provide services, treatment, or care to a nursing facility resident that causes or could cause mental or physical injury, harm, or death to the nursing facility resident.

(24) NFAAC--Nursing Facility Administrators Advisory Committee. The advisory committee described in §89.6 of this title (Nursing Facility Administrators Advisory Committee).

(25) Nursing facility--An institution or facility licensed by DADS as a nursing home, nursing facility, or skilled nursing facility.

(26) Nursing facility administrator--A person who is licensed to engage in the practice of nursing facility administration, regardless of whether the person has ownership interest in the facility.

(27) Opportunity to show compliance--An informal meeting between DADS and a licensee that allows the licensee an opportunity to show compliance with the requirements of law for the retention of the license. The opportunity to show compliance is part of an informal review.

(28) Preceptor--A licensed nursing facility administrator certified by DADS to provide supervision to an AIT.

(29) PES--Professional examination services. The testing agency that administers the NAB and state examinations to applicants seeking licensure as nursing facility administrators.

(30) Referral--A recommendation made by Regulatory Services Division staff to investigate an administrator's compliance with licensure requirements when deficiencies or substandard quality of care deficiencies are found in a nursing facility, as required by Title 42 Code of Federal Regulations.

(31) Regulatory Services Division--The division of DADS responsible for long term care regulation, including determining nursing facility compliance with licensure and certification requirements and licensing nursing facility administrators.

(32) Sanctions--Any adverse licensure actions DADS imposes against a licensee, including letter of reprimand, suspension, revocation, denial of license, and monetary penalties.

(33) Self-study course--A NAB-approved education course that an individual pursues independently to meet continuing education requirements for license renewal.

(34) State examination--The state licensure examination that applicants must pass, in combination with the NAB examination, to be issued a license to practice nursing facility administration in Texas. This examination covers the nursing facility requirements found in Chapter 19 of this title (relating to Nursing Facility Requirements for Licensure and Medicaid Certification).

(35) State of Texas Administrator-In-Training Internship Manual--The DADS program guide used by an AIT and preceptor during the AIT's internship for nursing facility administrator licensure.

(36) Substandard quality of care--Any deficiency in Resident Behavior and Facility Practices, Quality of Life, or Quality of Care that is immediate jeopardy to nursing facility resident health or safety; or a pattern of widespread actual harm that is not immediate jeopardy; or a widespread potential for more than minimal harm that is not immediate jeopardy, with no actual harm.

(37) Survey--A resident-focused complaint/incident investigation or annual licensure or certification inspection of a nursing facility by DADS.

(38) Traditional business hours--Monday through Friday from 8:00 a.m. until 5:00 p.m.

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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40 TAC §18.3

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.012, which authorizes the executive commissioner to establish and maintain advisory committees.

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CHAPTER 41. CONSUMER DIRECTED SERVICES OPTION

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), amendments to §41.103 and §41.108, in Subchapter A, Introduction; §41.211 and §41.225, in Subchapter B, Responsibilities of Employers and Designated Representatives; §41.309 and §41.323, in Subchapter C, Enrollment and Responsibilities of Financial Management Services Agencies (FMSAS); §41.505 and §41.507, in Subchapter E, Budgets, in Chapter 41, Consumer Directed Services Option, without changes to the proposed text as published in the November 27, 2015, issue of the *Texas Register* (40 TexReg 8535).

The adopted rules in Chapter 41 implement Community First Choice (CFC), a Medicaid state plan option governed by the Code of Federal Regulations, Title 42 (42 CFR), Chapter 441, Subchapter K, regarding Home and Community-Based Attendant Services and Supports State Plan Option (Community First Choice). CFC services are available to individuals enrolled in the DADS §1915(c) waiver programs of the Home and Community-based Services (HCS) Program, Texas Home Living (TxHmL) Program, the Community Living Assistance and Support Services (CLASS) Program, and the Deaf-Blind with Multiple Disabilities (DBMD) Program. CFC is authorized by Texas Government Code §534.152 and is governed by rules of the Texas Health and Human Services Commission in Texas Administrative Code, Title 1, Chapter 354, Medicaid Health Services, Subchapter A, Purchased Health Services, Division 27, Community First Choice (CFC). The Centers for Medicare and Medicaid Services (CMS) approved a state plan amendment to implement CFC effective June 1, 2015. Texas Government Code, §534.152(g) authorizes DADS to contract with providers participating in the HCS, TxHmL, CLASS, and DBMD Programs for the delivery of basic attendant and habilitation services through CFC and gives DADS regulatory and oversight authority over those providers.

CFC services in the waiver programs include CFC personal assistance services/habilitation (PAS/HAB), which provides services similar to services in the waiver programs, except transportation. An individual may receive CFC PAS/HAB through a program provider or the consumer directed services (CDS) option. The adopted rules address CFC PAS/HAB provided through the CDS option.

DADS received no comments regarding adoption of the amendments.

SUBCHAPTER A. INTRODUCTION

40 TAC §41.103, §41.108

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

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

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SUBCHAPTER B. RESPONSIBILITIES OF EMPLOYERS AND DESIGNATED REPRESENTATIVES

40 TAC §41.211, §41.225

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

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SUBCHAPTER C. ENROLLMENT AND RESPONSIBILITIES OF FINANCIAL MANAGEMENT SERVICES AGENCIES (FMSAS)

40 TAC §41.309, §41.323

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

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SUBCHAPTER E. BUDGETS

40 TAC §41.505, §41.507

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

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

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CHAPTER 42. DEAF BLIND WITH MULTIPLE DISABILITIES (DBMD) PROGRAM

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), amendments to §§42.101 - 42.105, in Subchapter A, Introduction; §§42.201, 42.212 - 42.217, 42.221 - 42.223, 42.231, 42.241 - 42.248, 42.251 and 42.252, in Subchapter B, Eligibility, Enrollment, and Review; §§42.402 - 42.405 and 42.407, in Subchapter D, Additional Program Provider Provisions; §§42.621, 42.623, 42.625, 42.626 42.628, 42.630 - 42.632, and 42.641, in Subchapter F, Service Descriptions and Requirements; and new §42.651, in Subchapter F, Service Descriptions and Requirements, in Chapter 42, Deaf Blind with Multiple Disabilities (DBMD) Program. Amendments to §§42.103, 42.104, 42.201, 42.212, 42.214, 42.223, 42.403 - 42.405, 42.625, 42.626, 42.631, and new 42.651 are adopted with changes to the proposed text as published in the November 27, 2015, issue of the *Texas Register* (40 TexReg 8545). Amendments to §§42.101, 42.102, 42.105, 42.213, 42.215 - 42.217, 42.221, 42.222, 42.231, 42.241 - 42.248, 42.251, 42.252, 42.402, 42.407, 42.621, 42.623, 42.628, 42.630, 42.632, and 42.641 are adopted without changes to the proposed text.

The adopted rules in Chapter 42, Deaf Blind with Multiple Disabilities (DBMD) Program, implement Community First Choice (CFC), a Medicaid state plan option governed by the Code of Federal Regulations, Title 42 (42 CFR), Chapter 441, Subchapter K, regarding Home and Community-Based Attendant Services and Supports State Plan Option (Community First Choice). CFC services are available to individuals enrolled in the DADS §1915(c) waiver programs of the Home and Community-based Services (HCS) Program, the Texas Home Living (TxHmL) Program, the Community Living Assistance and Support Services (CLASS) Program, and the Deaf-Blind with Multiple Disabilities (DBMD) Program. CFC is authorized by Texas Government Code §534.152 and is governed by rules of the Texas Health and Human Services Commission in Texas Administrative Code, Title 1, Chapter 354, Medicaid Health Services, Subchapter A, Purchased Health Services, Division 27, Community First Choice (CFC). The Centers for Medicare and Medicaid Services (CMS) approved a state plan amendment to implement CFC effective June 1, 2015. Texas Government Code, §534.152(g) authorizes DADS to contract with providers participating in the HCS, TxHmL, CLASS, and DBMD Programs for the delivery of basic attendant and habilitation services through CFC and gives DADS regulatory and oversight authority over those providers.

CFC services in the DBMD Program consist of: (1) CFC personal assistance services/habilitation (CFC PAS/HAB), which provides all the activities of DBMD residential habilitation, except transportation; (2) CFC emergency response services (CFC ERS), which is provided as a distinct CFC service instead of as an adaptive aid; and (3) CFC support management. The adopted rules give an individual the option to receive CFC PAS/HAB through a program provider or the consumer directed services (CDS) option.

The adopted rules, for consistency with the DBMD waiver application, add to the eligibility criteria for DBMD Program services that an individual must require the provision of at least one DBMD Program service per month or a monthly monitoring visit by a case manager, and at least one DBMD Program service per IPC period. The adopted rules require a case manager, for a month in which the case manager does not meet with an individual or LAR as required by §42.223(a) of this chapter (relating to Periodic Review and Update of IPC and IPP), to have a face-to-face or telephone contact with the individual or LAR or other persons acting on behalf of the individual, such as an advocate or family member, to provide case management to help ensure the individual's continued eligibility for the DBMD Program.

The adopted rules also require a case manager to ensure that the service planning team develops a transportation plan when an individual's IPC includes transportation as a residential habilitation activity or as an adaptive aid. The transportation plan helps ensure that the transportation hours requested are the most appropriate amount, are cost effective, and are necessary to enable an individual's independence and integration in the community.

Changes were made in §42.103(18) to delete the reference to §42.651(a) because licensure as a personal emergency response system provider or contracting with such a provider is no longer a requirement.

Changes were made in §42.103(20) to clarify that CFC PAS/HAB does not include transporting the individual and to clarify that "transporting" means driving the individual from one location to another.

A change was made in §42.104(e) to correct the title of §42.626.

A change was made in §42.201(b) to add that not receiving licensed assisted living or licensed home health assisted living is a CFC eligibility criteria. The agency made the changes because an individual receiving either of those DBMD Program services is not eligible for CFC services.

A change was made in §42.201(c) to clarify that the subsection sets forth the CFC eligibility criteria for an individual receiving MAO Medicaid.

Changes were made in §42.212(k)(3)(A) and §42.223(a)(4)(C)(i), (b)(2)(A)(iii)(I), and (d)(1)(B)(i) to change "or" to "and" because, in each case, two provisions must be followed if they both apply.

Changes were made in §42.214(a)(2) and §42.405(a)(11) regarding the IPC and transportation to be consistent with the wording used in similar rules.

Changes were made in §42.223(a)(4)(A), (b)(2)(A)(i), (b)(2)(B)(i), and (d)(1)(A) and in §42.404(f)(3) to correct rule cross-references.

A change was made in §42.403(m) to require a program provider to ensure that a staff member who is responsible for developing the IPP for CFC PAS/HAB completes person-centered service planning training approved by HHSC. The change clarifies the staff members who are required to complete the training.

A change was made in §42.405(a)(11) to correct the name of the waiver service "residential habilitation."

Changes were made in §42.625(a) and §42.631(a)(3) to correct the title of §42.402.

Changes were made to §42.626(b)(1)(A)(ii) to clarify that §42.104(e) is referencing transportation and to distinguish "transportation" from "assistance in securing transportation."

A change was made in §42.631(a)(3) to change the reference from §42.201(i) to §42.201 because there are qualifications for a respite service provider in §42.201 that are in addition to those in §42.201(i).

A change was made in §42.651 to delete subsection (a), which required a program provider or a contractor of the program provider to have a license as a personal emergency response system provider issued by the Department of State Health Services in accordance with 25 TAC Chapter 140, Subchapter B. The agency made the change because Health and Safety Code, Chapter 781, regarding licensure of personal emergency response system providers was repealed by Senate Bill 202 (84th Texas Legislature, Regular Session, 2015) and, therefore, licensure as a personal emergency response system provider is no longer available. DADS received written comments from the Texas Association for Home Care and Hospice. A summary of the comments and the responses follows.

Comment: Regarding §42.103(20), a commenter suggested that the definitions of "habilitation" and "personal assistance services" should be consistent with the definitions in Texas Government Code, §534.001, and the HCSSA license rules.

Response: The definition in §42.103(20) of "CFC PAS/HAB--CFC personal assistance services/habilitation," which contains the terms "personal assistance services" and "habilitation" is derived from the approved Texas State Plan Amendment and does not conflict with the definition of "personal assistance services" or "habilitation" in Health and Safety Code, §142.001, or the definition of "habilitation services" in Government Code, §534.001. The agency did not make a change in response to this comment.

Comment: Regarding §42.103(23), a commenter stated there is potential hazard posed to a direct service worker from the change to the definition of "chore services" that includes "heavy household chores and moving heavy items/furniture." The commenter requested that this be removed so that the definition matches the CLASS definition of chore service (i.e., limited to "household chores necessary to maintain the home in a clean, sanitary, and safe environment").

Response: These rules changed the definition of "chore services" in §42.103(23) to distinguish between the "chore services" offered under the DBMD waiver and the "household chores necessary to maintain the home in a clean, sanitary, and safe environment" included in §42.103(20) in the definition of "CFC PAS/HAB" offered under the Medicaid state plan. The definition of "CFC PAS/HAB" in §45.103(21) governing CLASS program providers also includes "household chores necessary to maintain the home in a clean, sanitary, and safe environment." The CLASS Program does not offer chore services as a waiver service so the term "chore services" is not defined in the CLASS rules. These rules added examples of chore services in §42.103(23) that duplicate the examples given in the current §42.622(a), which includes heavy household chores, such as moving heavy items of furniture. Section 42.622(c)(1)(B) requires a DBMD program provider to ensure that a person providing chore services can perform household tasks. The agency did not change the definition in response to this comment.

Comment: Regarding §42.103(44), a commenter stated that health maintenance activities (HMAs) do not need to be delegated by a registered nurse (RN) so the definition of "health-related tasks" is misleading. The commenter asked that it be changed to "These include tasks delegated by an RN and HMAs that do not require delegation as defined in 22 TAC §225.4 (relating to Definitions)."

Response: Health maintenance activities, as defined in 22 TAC §225.4, may be exempt from delegation or may require delegation, depending on an RN assessment. For clarification, the agency made a change in §42.103(44) to include HMAs that may not require delegation as an example of "health-related tasks."

Comment: Regarding §42.103(60), a commenter asked if a home and community support services agency (HCSSA) is considered "licensed home health assisted living." If so, the commenter asked if "attendants" are required to have cardiopulmonary resuscitation (CPR) and first aid training.

Response: "Licensed home health assisted living" is a DBMD Program service that, as defined in §42.103(60), is a service provided by a program provider licensed in accordance with Chapter 97 of this title (relating to Licensing Standards for Home and Community Support Services Agencies) in a residence for no more than three individuals, at least one of whom owns or leases the residence. A "service provider," as defined in §42.103(94), is a person who provides a DBMD Program service or CFC service directly to an individual and who is an employee or contractor of a program provider. A program provider providing licensed home health assisted living must ensure, in accordance with §42.403(b), that a service provider who provides services directly to an individual in a residence where licensed home health assisted living is provided has current documentation of completion of hands-on skills training in CPR, first aid, and choking prevention. The agency did not make a change in response to the comment.

SUBCHAPTER A. INTRODUCTION

40 TAC §§42.101 - 42.105

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

§42.103. Definitions.

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

(1) Actively involved--Significant, ongoing, and supportive involvement with an individual by a person, as determined by the individual's service planning team, based on the person's:

(A) interactions with the individual;

(B) availability to the individual for assistance or support when needed; and

(C) knowledge of, sensitivity to, and advocacy for the individual's needs, preferences, values, and beliefs.

(2) Activities of daily living. Basic personal everyday activities, including tasks such as eating, toileting, grooming, dressing, bathing, and transferring

(3) Adaptive aid--An item or service (including a medically necessary supply or device) that enables an individual to retain or increase the ability to:

(A) perform activities of daily living; or

(B) perceive, control, or communicate with the environment in which the individual lives.

(4) Adaptive behavior--The effectiveness with or degree to which an individual meets the standards of personal independence and social responsibility expected of the individual's age and cultural group as assessed by a standardized measure.

(5) Adaptive behavior level--The categorization of an individual's functioning level based on a standardized measure of adaptive behavior. Four levels are used ranging from mild limitations in adaptive skills (I) through profound limitations in adaptive skills (IV).

(6) Adaptive behavior screening assessment--A standardized assessment used to determine an individual's adaptive behavior level, and conducted using one of the following assessment instruments:

(A) American Association of Intellectual and Developmental Disabilities (AAIDD) Adaptive Behavior Scales (ABS);

(B) Inventory for Client and Agency Planning (ICAP);

(C) Scales of Independent Behavior--Revised (SIB-R); or

(D) Vineland Adaptive Behavior Scales, Second Edition (Vineland-II).

(7) Alarm call--A signal transmitted from an individual's CFC ERS equipment to the CFC ERS response center indicating that the individual needs immediate assistance.

(8) ALF--Assisted living facility. An entity required to be licensed under the Texas Health and Safety Code, (THSC), Chapter 247, Assisted Living Facilities.

(9) Behavioral emergency--A situation in which an individual is acting in an aggressive, destructive, violent, or self-injurious manner that poses a risk of death or serious bodily harm to the individual or others.

(10) Behavioral support--Formerly referred to as "behavior communication," a service that provides specialized interventions that assist an individual to increase adaptive behaviors to replace or modify challenging or socially unacceptable behaviors that prevent or interfere with the individual's inclusion in home and family life or community life, with a particular emphasis on communication as it affects behavior.

(11) Business day--Any day except a Saturday, a Sunday, or a national or state holiday listed in Texas Government Code §662.003(a) or (b).

(12) Calendar day--Any day, including weekends and holidays.

(13) Case management--Services that assist an individual to gain access to needed waiver and other state plan services, as well as needed medical, social, education, and other services, regardless of the funding source for the services.

(14) Case manager--A service provider who is responsible for the overall coordination and monitoring of DBMD Program services and CFC services provided to an individual.

(15) CDS option--Consumer directed services option. A service delivery option as defined in §41.103 of this title (relating to Definitions).

(16) CFC--Community First Choice.

(17) CFC ERS--CFC emergency response services. Backup systems and supports used to ensure continuity of services and supports. CFC ERS includes electronic devices and an array of available technology, personal emergency response systems, and other mobile communication devices.

(18) CFC ERS provider--The entity directly providing CFC ERS to an individual, which may be the program provider or a contractor of the program provider.

(19) CFC FMS--The term used for FMS on the IPC of an individual if the individual receives only CFC PAS/HAB through the CDS option.

(20) CFC PAS/HAB--CFC personal assistance services/habilitation. A service:

(A) that consists of:

(i) personal assistance services that provide assistance to an individual in performing activities of daily living and instrumental activities of daily living based on the individual's person-centered service plan, including:

(I) non-skilled assistance with the performance of the ADLs and IADLs;

(II) household chores necessary to maintain the home in a clean, sanitary, and safe environment;

(III) escort services, which consist of accompanying and assisting an individual to access services or activities in the community, but do not include transporting an individual; and

(IV) assistance with health-related tasks; and

(ii) habilitation that provides assistance to an individual in acquiring, retaining, and improving self-help, socialization, and daily living skills and training the individual on ADLs, IADLs, and health-related tasks, such as:

(I) self-care;

(II) personal hygiene;

(III) household tasks;

(IV) mobility;

(V) money management;

(VI) community integration, including how to get around in the community;

(VII) use of adaptive equipment;

(VIII) personal decision making;

(IX) reduction of challenging behaviors to allow individuals to accomplish ADLs, IADLs, and health-related tasks; and

(X) self-administration of medication; and

(B) does not include transporting the individual, which means driving the individual from one location to another.

(21) CFC support consultation--The term used for support consultation on the IPC of an individual if the individual receives only CFC PAS/HAB through the CDS option.

(22) CFC support management--Training regarding how to select, manage, and dismiss an unlicensed service provider of CFC PAS/HAB, as described in the *DBMD Provider Manual.*

(23) Chore services--Services, other than CFC PAS/HAB household chores, needed to maintain a clean, sanitary, and safe environment in an individual's home that consist of heavy household chores, such as washing floors, windows and walls, securing loose rugs and tiles, and moving heavy items or furniture.

(24) CMS--The Centers for Medicare and Medicaid Services. The federal agency within the United States Department of Health and Human Services that administers the Medicare and Medicaid programs.

(25) Competitive employment--Employment that pays an individual at least minimum wage if the individual is not self-employed.

(26) Contract--A provisional contract that DADS enters into in accordance with §49.208 of this chapter (relating to Provisional Contract Application Approval) that has a stated expiration date or a standard contract that DADS enters into in accordance with §49.209 of this chapter (relating to Standard Contract) that does not have a stated expiration date.

(27) DADS--The Department of Aging and Disability Services.

(28) DAHS--Day Activity and Health Services. Day activity and health services as defined in §98.2 of this title (relating to Definitions).

(29) DBMD Program--The Deaf Blind with Multiple Disabilities Waiver Program.

(30) DBMD Program specialist--Employee in DADS state office who is the primary contact for the DBMD Program.

(31) Deafblindness--A chronic condition in which a person:

(A) has deafness, which is a hearing impairment severe enough that most speech cannot be understood with amplification; and

(B) has legal blindness, which results from a central visual acuity of 20/200 or less in the person's better eye, with correction, or a visual field of 20 degrees or less.

(32) Denial--A DADS action that disallows:

(A) an individual's request for enrollment in the DBMD Program;

(B) a DBMD Program service or a CFC service requested on an IPC that was not authorized on the prior IPC; or

(C) a portion of the amount or level of a DBMD Program service or a CFC service requested on an IPC that was not authorized on the prior IPC.

(33) Dental treatment--A service that provides the following services, as described in Appendix C of the DBMD Program waiver application (found on the DBMD Program page of DADS website at www.dads.state.tx.us):

(A) therapeutic, orthodontic, routine preventive, and emergency treatment; and

(B) sedation.

(34) Developmental disability--As defined in the Developmental Disabilities Assistance and Bill of Rights Act of 2000, Section 102(8), a severe, chronic disability of an individual five years of age or older that:

(A) is attributable to a mental or physical impairment or combination of mental and physical impairments;

(B) is manifested before the individual attains 22 years of age;

(C) is likely to continue indefinitely;

(D) results in substantial functional limitations in three or more of the following areas of major life activity:

(i) self-care;

(ii) receptive and expressive language;

(iii) learning;

(iv) mobility;

(v) self-direction;

(vi) capacity for independent living; and

(vii) economic self-sufficiency.

(35) DFPS--Department of Family and Protective Services.

(36) Dietary services--A therapy service that:

(A) assists an individual to meet basic or special therapeutic nutritional needs through the development of individual meal plans; and

(B) is provided by a person licensed in accordance with Texas Occupations Code, Chapter 701, Dieticians.

(37) Employment assistance--Assistance provided to an individual to help the individual locate competitive employment in the community.

(38) FMS--Financial management services. Services, as defined in §41.103 of this title provided to an individual participating in the CDS option.

(39) FMSA--Financial management services agency. An entity, as defined in §41.103 of this title, that provides FMS to an individual participating in the CDS option.

(40) Former military member--A person who served in the United States Army, Navy, Air Force, Marine Corps, or Coast Guard:

(A) who declared and maintained Texas as the person's state of legal residence in the manner provided by the applicable military branch while on active duty; and

(B) who was killed in action or died while in service, or whose active duty otherwise ended.

(41) Functions as a person with deafblindness--Situation in which a person is determined:

(A) to have a progressive medical condition, manifested before 22 years of age, that will result in the person having deafblindness; or

(B) before attaining 22 years of age, to have limited hearing or vision due to protracted inadequate use of either or both of these senses.

(42) Good cause--As determined by DADS, a reason outside the control of the CFC ERS provider.

(43) HCSSA (Home and community support services agency)--An entity required to be licensed under THSC, Chapter 142, Home and Community Support Services.

(44) Health-related tasks--Specific tasks related to the needs of an individual, which can be delegated or assigned by licensed health-care professionals under State law to be performed by a service provider of CFC PAS/HAB. These include tasks delegated by an RN; health maintenance activities, as defined in 22 TAC §225.4 (relating to Definitions), that may not require delegation; and activities assigned to a service provider of CFC PAS/HAB by a licensed physical therapist, occupational therapist, or speech-language pathologist.

(45) HHSC--Texas Health and Human Services Commission.

(46) Instrumental activities of daily living. Activities related to living independently in the community, including meal planning and preparation; managing finances; shopping for food, clothing, and other essential items; performing essential household chores; communicating by phone or other media; and traveling around and participating in the community.

(47) ICF/IID--Intermediate care facility for individuals with an intellectual disability or related conditions. An ICF/IID is a facility in which ICF/IID Program services are provided and that is:

(A) licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 252; or

(B) certified by DADS, including a state supported living center.

(48) ICF/IID Program--The Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions Program that provides Medicaid-funded residential services to individuals with an intellectual disability or related conditions.

(49) ID/RC Assessment (Intellectual Disability/Related Condition Assessment)--An assessment conducted to determine if an individual meets the diagnostic eligibility criteria for the DBMD Program.

(50) Impairment to independent functioning--An adaptive behavior level of II, III, or IV.

(51) Individual--A person seeking to enroll or who is enrolled in the DBMD Program.

(52) Institutional services--Services provided in an ICF/IID or a nursing facility.

(53) Intellectual disability--Significant sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and originating during the developmental period.

(54) Intervener--A service provider with specialized training and skills in deafblindness who, working with one individual at a time, serves as a facilitator to involve an individual in home and community services and activities, and who is classified as an "Intervener", "Intervener I", "Intervener II", or "Intervener III" in accordance with Texas Government Code, §531.0973.

(55) IPC--Individual Plan of Care. A written plan developed by an individual's service planning team using person-centered planning and documented on a DADS form that:

(A) meets:

(i) the criteria in §42.201(a)(5) of this chapter (relating to Eligibility Criteria for DBMD Program Services and CFC Services); and

(ii) the requirements described in §42.214(a)(1) and (b)(1) - (6) of this chapter (relating to Development of Enrollment Individual Plan of Care (IPC)); and

(B) is authorized by DADS in accordance with Subchapter B of this chapter (relating to Eligibility, Enrollment, and Review).

(56) IPP--Individual Program Plan. A written plan documented on a DADS form and completed by an individual's case manager that describes the goals and objectives for each DBMD Program service and CFC service, other than CFC support management, included on the individual's IPC.

(57) IPC period--The effective period of an IPC as follows:

(A) for an enrollment IPC, the period of time from the effective date of service approved by DADS until the first calendar day of the same month of the effective date of service in the following year; and

(B) for a renewal IPC, a 12-month period of time starting on the effective date of a renewal IPC.

(58) LAR--Legally authorized representative. A person authorized by law to act on behalf of an individual with regard to a matter described in this chapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(59) Licensed assisted living--A service provided in a residence licensed in accordance with Chapter 92 of this title (relating to Licensing Standards for Assisted Living Facilities) for four to six individuals.

(60) Licensed home health assisted living--A service provided by a program provider licensed in accordance with Chapter 97 of this title (relating to Licensing Standards for Home and Community Support Services Agencies) in a residence for no more than three individuals, at least one of whom owns or leases the residence.

(61) LVN--Licensed vocational nurse. A person licensed to provide vocational nursing in accordance with Texas Occupations Code, Chapter 301, Nurses.

(62) Managed care organization--This term has the meaning set forth in Texas Government Code, §536.001.

(63) MAO Medicaid--Medical Assistance Only Medicaid. A type of Medicaid by which an individual qualifies financially for Medicaid assistance but does not receive Supplemental Security Income (SSI) benefits.

(64) Mechanical restraint--A mechanical device, material, or equipment used to control an individual's behavior by restricting the ability of the individual to freely move part or all of the individual's body. The term does not include a protective device.

(65) Medicaid--A program funded jointly by the states and the federal government that provides medical benefits to groups of

low-income people, some who may have no medical insurance or inadequate medical insurance.

(66) Medicaid waiver program--A service delivery model authorized under §1915(c) of the Social Security Act in which certain Medicaid statutory provisions are waived by CMS.

(67) Military member--A member of the United States military serving in the Army, Navy, Air Force, Marine Corps, or Coast Guard on active duty who has declared and maintains Texas as the member's state of legal residence in the manner provided by the applicable military branch.

(68) Military family member--A person who is the spouse or child (regardless of age) of:

(A) a military member; or

(B) a former military member.

(69) Minor home modifications--Physical adaptation to an individual's residence necessary to address the individual's specific needs and enable the individual to function with greater independence or control the residence's environment.

(70) Natural supports--Unpaid persons, including family members, volunteers, neighbors, and friends, who assist and sustain an individual.

(71) Nursing--Treatments and health care procedures provided by an RN or LVN that are:

(A) ordered by a physician; and

(B) provided in compliance with:

(i) Texas Occupations Code, Chapter 301, Nurses; and

(ii) rules at Texas Board of Nursing at Texas Administrative Code (TAC), Title 22, Part 11, Texas Board of Nursing.

(72) Nursing facility--A facility that is licensed in accordance with the Texas Health and Safety Code, Chapter 242.

(73) Occupational therapy--Services that:

(A) address physical, cognitive, psychosocial, sensory, and other aspects of performance to support an individual's engagement in everyday life activities that affect health, wellbeing, and quality of life; and

(B) are provided by a person licensed in accordance with Texas Occupations Code, Chapter 454, Occupational Therapists.

(74) Orientation and mobility--Service that assists an individual to acquire independent travel skills that enable the individual to negotiate safely and efficiently between locations at home, school, work, and in the community.

(75) Person-centered planning--A process that empowers the individual (and the LAR on the individual's behalf) to direct the development of an IPC that meets the individual's outcomes. The process:

(A) identifies existing supports and services necessary to achieve the individual's outcomes;

(B) identifies natural supports available to the individual and negotiates needed services and supports;

(C) occurs with the support of a group of people chosen by the individual (and the LAR on the individual's behalf); and

(D) accommodates the individual's style of interaction and preferences regarding time and setting.

(76) Personal funds--The funds that belong to an individual, including earned income, social security benefits, gifts, and inheritances.

(77) Personal leave day--A continuous 24-hour period, measured from midnight to midnight, when an individual who resides in a residence in which licensed assisted living or licensed home health assisted living is provided is absent from the residence for personal reasons.

(78) Physical restraint--Any manual method used to control an individual's behavior, except for physical guidance or prompting of brief duration that an individual does not resist, that restricts:

(A) the free movement or normal functioning of all or a part of the individual's body; or

(B) normal access by an individual to a portion of the individual's body.

(79) Physical therapy--Services that:

(A) prevent, identify, correct, or alleviate acute or prolonged movement dysfunction or pain of anatomic or physiologic origin; and

(B) are provided by a person licensed in accordance with Texas Occupations Code, Chapter 453, Physical Therapists.

(80) Physician--As defined in §97.2 of this title (relating to Definitions), a person who is:

(A) licensed in Texas to practice medicine or osteopathy in accordance with Texas Occupations Code, Chapter 155;

(B) licensed in Arkansas, Louisiana, New Mexico, or Oklahoma to practice medicine, who is the treating physician of a client and orders home health or hospice services for the client, in accordance with the Texas Occupations Code, §151.056(b)(4); or

(C) a commissioned or contract physician or surgeon who serves in the United States uniformed services or Public Health Service if the person is not engaged in private practice, in accordance with the Texas Occupations Code, §151.052(a)(8).

(81) Program provider--A person, as defined in §49.102 of this title (relating to Definitions), that has a contract with DADS to provide DBMD Program services, excluding an FMSA.

(82) Protective device--An item or device, such as a safety vest, lap belt, bed rail, safety padding, adaptation to furniture, or helmet, if:

(A) used only:

(i) to protect an individual from injury; or

(ii) for body positioning of the individual to ensure health and safety; and

(B) not used to modify or control behavior.

(83) Psychoactive medication restraint--A medication used to control an individual's behavior or to restrict the individual's freedom of movement that is not a standard treatment for the individual's medical or psychological condition.

(84) Public emergency personnel--Personnel of a sheriff's department, police department, emergency medical service, or fire department.

(85) Reduction--A DADS action taken as a result of a review of a revision or renewal IPC that decreases the amount or level of a service authorized by DADS on the prior IPC.

(86) Related condition--As defined in the Code of Federal Regulations (CFR), Title 42, §435.1010, a severe and chronic disability that:

(A) is attributed to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, other than mental illness, found to be closely related to an intellectual disability because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of individuals with an intellectual disability, and requires treatment or services similar to those required for individuals with an intellectual disability;

(B) is manifested before the individual reaches 22 years of age;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in at least three of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

(87) Respite--Services provided on a short-term basis to an individual because of the absence or need for relief of an individual's unpaid caregiver.

(88) Responder--A person designated to respond to an alarm call activated by an individual.

(89) Restraint--Any of the following:

(A) a physical restraint;

(B) a mechanical restraint; or

(C) a psychoactive medication restraint.

(90) Restrictive intervention--An action or procedure that limits an individual's movement, access to other individuals, locations or activities, or restricts an individual's rights, including a restraint, a protective device, and seclusion.

(91) RN--Registered nurse. A person licensed to provide professional nursing in accordance with Texas Occupations Code, Chapter 301, Nurses.

(92) Seclusion--A restrictive intervention that is the involuntary separation of an individual away from other individuals in an area that the individual is prevented from leaving.

(93) Service planning team--A team convened and facilitated by a DBMD Program case manager for the purpose of developing, reviewing, and revising an individual's IPC. The team consists of:

(A) the individual;

(B) if applicable, the individual's LAR or an actively involved person;

(C) the DBMD Program case manager;

(D) except as described in subparagraph (E) of this paragraph, the program director or a RN designated by the program provider;

(E) if the DBMD Program case manager and program director are the same person, a RN designated by the program provider, in addition to the DBMD Program case manager;

(F) other persons whose inclusion is requested by the individual, LAR, or actively involved person; and

(G) other persons selected by the program provider who are:

(i) professionally qualified by certification or licensure and have special training and experience in the diagnosis and habilitation of persons with the individual's related condition; or

(ii) directly involved in the delivery of services and supports to the individual.

(94) Service provider--A person who provides a DBMD Program service or a CFC service directly to an individual and who is an employee or contractor of a program provider.

(95) Significantly subaverage general intellectual functioning--Consistent with THSC, §591.003, measured intelligence on standardized general intelligence tests of two or more standard deviations (not including standard error of measurement adjustments) below the age-group mean for the tests used.

(96) Speech, language, audiology therapy--Services that:

(A) address the development and disorders of communication, including speech, voice, language, oral pharyngeal function, or cognitive processes; and

(B) are provided by a person licensed in accordance with Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists.

(97) Specialized nursing--Nursing provided to an individual who has a tracheostomy or is dependent on a ventilator.

(98) SSA--Social Security Administration.

(99) SSI--Supplemental Security Income.

(100) State supported living center--A state-supported and structured residential facility operated by DADS to provide to persons with an intellectual disability a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills, but does not include a community-based facility owned by DADS.

(101) Support consultation--A service, as defined in §41.103 of this title, that may be chosen by an individual who chooses to participate in the CDS option.

(102) Supported employment--Assistance provided, in order to sustain competitive employment, to an individual who, because of a disability, requires intensive, ongoing support to be self-employed, work from home, or perform in a work setting at which individuals without disabilities are employed.

(103) System check--A test of the CFC ERS equipment to determine if:

(A) the individual can successfully activate an alarm call; and

(B) the equipment is working properly.

(104) TAC--Texas Administrative Code.

(105) TAS--Transition Assistance Services. Services provided to a Medicaid-eligible person receiving institutional services in

Texas to assist with setting up a household when transitioning from institutional services into the DBMD Program.

(106) TMHP--Texas Medicaid & Healthcare Partnership. The Texas Medicaid program claims administrator.

(107) Transfer--The movement of an individual from a DBMD Program provider or a FMSA to a different DBMD Program provider or FMSA.

(108) Transportation plan--A written plan, based on person-centered planning and developed with an applicant or individual using DADS Individual Transportation Plan form found at www.dads.state.tx.us. A transportation plan is used to document how transportation will be delivered to support an individual's desired goals and objectives for transportation identified in the IPP.

(109) Trust fund account--An account at a financial institution that contains an individual's personal funds and is under the program provider's control.

§42.104. Description of Deaf Blind with Multiple Disabilities (DBMD) Waiver Program and CFC.

(a) The Deaf Blind with Multiple Disabilities (DBMD) Program is a Medicaid waiver program. It provides community-based services and supports to an eligible individual as an alternative to the ICF/IID Program.

(b) DADS operates the DBMD Program under the authority of HHSC.

(c) DADS limits the enrollment in the DBMD Program to the number of individuals approved by CMS and funded by the State of Texas.

(d) The DBMD Program offers the following services approved by CMS:

(1) adaptive aids;

(2) assisted living:

(A) licensed assisted living; and

(B) licensed home health assisted living;

(3) behavioral support;

(4) case management;

(5) chore services;

(6) day habilitation;

(7) dental treatment;

(8) dietary services;

(9) employment assistance;

(10) intervener;

(11) minor home modifications;

(12) nursing;

(13) occupational therapy;

(14) orientation and mobility;

(15) physical therapy;

(16) residential habilitation;

(17) respite;

(18) speech, language, audiology therapy;

(19) supported employment;

(20) TAS; and

(21) if the individual's IPC includes at least one DBMD Program service to be delivered through the CDS option:

(A) FMS; and

(B) support consultation.

(e) A program provider may only provide and bill for residential habilitation if the activity provided is transportation as described in §42.626(b)(1)(A)(ii)(I) of this chapter (relating to Day Habilitation, Residential Habilitation, and CFC PAS/HAB).

(f) CFC is a state plan option governed by Code of Federal Regulations, Title 42, Chapter 441, Subchapter K, regarding Home and Community-Based Attendant Services and Supports State Plan Option (Community First Choice) that provides the following services to an individual:

(1) CFC PAS/HAB;

(2) CFC ERS; and

(3) CFC support management for an individual receiving CFC PAS/HAB.

(g) A program provider with a contract enrollment date on or after September 1, 2009, must serve all counties within a DADS region.

(h) A program provider with a contract enrollment date before September 1, 2009, may continue to serve only the counties specified in its contract. If such a program provider chooses to provide services in additional counties, the program provider does not have to serve all the counties within the DADS region.

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

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SUBCHAPTER B. ELIGIBILITY, ENROLLMENT, AND REVIEW

DIVISION 1. ELIGIBILITY

40 TAC §42.201

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct

Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

§42.201. Eligibility Criteria for DBMD Program Services and CFC Services.

(a) An individual is eligible for DBMD Program services if:

(1) the individual meets the financial eligibility criteria as described in Appendix B of the DBMD Program waiver application approved by CMS and found at www.dads.state.tx.us;

(2) the individual is determined by DADS to meet the diagnostic eligibility criteria described in §9.239 of this title (relating to ICF/MR Level of Care VIII Criteria);

(3) the individual, as documented on an ID/RC Assessment form:

(A) has one or more diagnosed related conditions and, as a result:

(i) has deafblindness;

(ii) has been determined to have a progressive medical condition that will result in deafblindness; or

(iii) functions as a person with deafblindness; and

(B) has one or more additional disabilities that result in impairment to independent functioning;

(4) the individual's related conditions, as described in paragraph (3)(A) of this section, manifested before the individual became 22 years of age;

(5) the individual has an IPC with a cost for DBMD Program services at or below $114,736.07;

(6) the individual is not enrolled in another waiver program or receiving a service that may not be received if the individual is enrolled in the DBMD Program, as identified in the Mutually Exclusive Services table in Appendix V of the *DBMD Provider Manual* available atwww.dads.state.tx.us;

(7) the individual does not reside in:

(A) an ICF/IID;

(B) a nursing facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 242, Convalescent and Nursing Homes and related Institutions;

(C) an ALF, unless it provides licensed assisted living in the DBMD Program;

(D) a residential child-care operation licensed or subject to being licensed by DFPS unless it is a foster family home or a foster group home;

(E) a facility licensed or subject to being licensed by the Department of State Health Services (DSHS);

(F) a residential facility operated by the Texas Youth Commission; or

(G) a jail or prison;

(8) at least one program provider is willing to provide DBMD Program services to the individual;

(9) the individual resides or moves to reside in a county served by a program provider; and

(10) the individual requires the provision of:

(A) at least one DBMD Program Service per month or monthly monitoring; and

(B) at least one DBMD Program Service during an IPC period.

(b) Except as provided in subsection (c) of this section, an individual is eligible for a CFC service under this chapter if the individual:

(1) meets the criteria described in subsection (a) of this section;

(2) requires the provision of the CFC service; and

(3) is not receiving licensed assisted living or licensed home health assisted living.

(c) To be eligible for a CFC service under this chapter, an An individual receiving MAO Medicaid must, in addition to meeting the eligibility criteria described in subsection (b) of this section, receive a DBMD Program service at least monthly, as required by 42 CFR §441.510(d).

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DIVISION 2. ENROLLMENT PROCESS

40 TAC §§42.212 - 42.217

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

§42.212. Process for Enrollment of an Individual.

(a) A program provider, after notification by DADS that an individual designated the program provider on a completed Documentation of Provider Choice form, must assign a case manager to the individual.

(b) The program provider must ensure that the assigned case manager contacts the individual or LAR within five business days after the program provider receives the DADS notification. During the initial contact, the case manager must:

(1) verify that the individual resides in a county for which the program provider has a contract;

(2) determine if the individual is currently enrolled in Medicaid;

(3) determine if the individual is currently enrolled in another waiver program or receiving a service that may not be received if the individual is enrolled in the DBMD Program, as identified in the Mutually Exclusive Services table in Appendix V of the *DBMD Provider Manual* available at www.dads.state.tx.us; and

(4) arrange with the individual and LAR for an initial face-to-face, in-home visit to occur as soon as possible but no later than 30 calendar days after the program provider receives the DADS notification.

(c) During the initial face-to-face, in-home visit, the case manager must:

(1) provide an oral and written explanation to the individual or LAR of:

(A) DBMD Program services, including TAS if the individual is receiving institutional services;

(B) CFC services;

(C) the eligibility requirements for:

(i) DBMD Program services as described in §42.201(a) of this subchapter (relating to Eligibility Criteria for DBMD Program Services and CFC Services);

(ii) CFC services as described in §42.201(b) of this subchapter to individuals who do not receive MAO Medicaid; and

(iii) CFC services as described in §42.201(c) of this subchapter to individuals who receive MAO Medicaid;

(D) the reasons DBMD Program services and CFC services may be terminated as described in §§42.244 - 42.247 of this chapter (relating to Termination of DBMD Program Services and CFC Services With Advance Notice Due to Ineligibility or Leave from the State, Termination of DBMD Program Services and CFC Services With Advance Notice Due to Non-compliance with Mandatory Participation Requirements, Termination of DBMD Program Services and CFC Services Without Advance Notice, and Termination of DBMD Program Services and CFC Services Without Advance Notice Due to Behavior Causing Immediate Jeopardy;

(E) the individual's rights and responsibilities, including the right to request a Medicaid Fair Hearing as described in §42.251 of this chapter (relating to Individual's Right to a Fair Hearing);

(F) the mandatory participation requirements as described in §42.252 of this chapter (relating to Mandatory Participation Requirements of an Individual);

(G) the procedures for an individual or LAR to file a complaint regarding a DBMD Program provider;

(H) the CDS option as described in §42.217 of this chapter (relating to Consumer Directed Services (CDS) Option);

(I) the voter registration process, if the individual is 18 years of age or older;

(J) how to contact the program provider, the case manager, and the RN;

(K) that the individual or LAR may request the provision of residential habilitation, case management, nursing, out-of-home respite in a camp, adaptive aids, intervener services, or CFC PAS/HAB while the individual is temporarily staying at a location outside the contracted service delivery area but within the state of Texas during a period of no more than 60 consecutive days; and

(L) procedures for reporting an allegation of abuse, neglect, and exploitation;

(2) if possible:

(A) complete an adaptive behavior screening assessment or ensure an appropriate professional completes the adaptive behavior screening assessment; and

(B) ensure an RN completes a nursing assessment using the DADS CLASS/DBMD Nursing Assessment form;

(3) complete the ID/RC Assessment form; and

(4) obtain the signature of the individual or LAR on:

(A) the Verification of Freedom of Choice form designating the individual's choice regarding enrollment in the DBMD Program over enrollment in the ICF/IID Program; and

(B) DADS Release of Information Consent form or a similar form developed by the program provider.

(d) If one or both of the assessments described in subsection (c)(2) of this section is not completed during the initial face-to-face, in-home visit, the case manager must ensure that the assessment is completed within 10 business days after the date of the initial face-to-face, in-home visit.

(e) If an individual is Medicaid eligible, is receiving institutional services, and anticipates needing TAS, the case manager must determine whether the individual meets the following criteria:

(1) the individual is being discharged from a nursing facility or an ICF/IID;

(2) the individual has not previously received TAS as described in §62.5(e) of this title (relating to Service Description);

(3) the individual's proposed enrollment IPC does not include licensed assisted living or licensed home health assisted living; and

(4) the individual anticipates needing TAS as described in §62.5(e) of this title.

(f) If the case manager determines that an individual meets the criteria described in subsection (e) of this section, the case manager must:

(1) provide the individual or LAR with a list of TAS providers in the service delivery area in which the individual will reside;

(2) complete, with the individual or LAR, the Transition Assistance Services (TAS) Assessment and Authorization form found at www.dads.state.tx.us in accordance with the form's instructions, which includes:

(A) identifying the TAS the individual needs as described in §62.5(e) of this title; and

(B) estimating the monetary amount for each TAS identified, which must be within the service limit described in §62.5(d) of this title;

(3) submit the completed form to DADS for authorization;

(4) send the form authorized by DADS to the selected TAS provider; and

(5) include the TAS and the monetary amount authorized by DADS on the individual's enrollment IPC as described in §42.214 of this chapter (relating to Development of Enrollment Individual Plan of Care (IPC)).

(g) The program provider must:

(1) gather and maintain the information necessary to process the individual's request for enrollment in the DBMD Program using forms prescribed by DADS in the *DBMD Provider Manual;*

(2) assist the individual who does not have Medicaid financial eligibility or the individual's LAR to:

(A) complete an application for Medicaid financial eligibility; and

(B) submit the completed application to HHSC within 30 calendar days after the case manager's initial face-to-face, in-home visit;

(3) document in the individual's record any problems or barriers the individual or LAR encounters that may inhibit progress towards completing:

(A) the application for Medicaid financial eligibility; and

(B) enrollment in DBMD Program services; and

(4) assist the individual or LAR to overcome problems or barriers documented as described in paragraph (3) of this subsection.

(h) If an individual or LAR does not submit a completed Medicaid application to HHSC as described in subsection (g)(2)(B) of this section as a result of problems or barriers documented in subsection (g)(3) of this section but is making progress in collecting the documentation necessary for an application, the program provider may grant one or more 30 calendar day extensions.

(1) The program provider must ensure the case manager documents the rationale for an extension in the individual's record.

(2) The program provider must not issue an extension that will cause the period of Medicaid application preparation to exceed 12 months after the date of the case manager's initial face-to-face, in-home visit.

(3) The program provider must notify DADS DBMD program specialist in writing if the individual or LAR:

(A) fails to submit a completed Medicaid application to HHSC within 12 months after the date of the case manager's initial face-to-face, in-home visit; or

(B) does not cooperate with the case manager in completing the enrollment process described in this section.

(i) A program provider must ensure:

(1) the related conditions documented on the ID/RC Assessment form for the individual are on DADS Approved Diagnostic Codes for Persons with Related Conditions list contained in the *DBMD Provider Manual;*

(2) the ID/RC Assessment is submitted to a physician for review; and

(3) the DADS Prior Authorization for Dental Services form is sent to a dentist as described in the *DBMD Provider Manual* if the individual or LAR requests dental services other than an initial dental exam.

(j) After receiving the signed and dated ID/RC Assessment from the physician establishing that the individual meets the eligibility criteria described in §42.201(a)(3) and (4) of this subchapter, the case manager must:

(1) convene a service planning team meeting within 10 business days after receipt of the signed and dated ID/RC Assessment; and

(2) if a DADS Prior Authorization for Dental Services form was submitted to a dentist as described in subsection (i)(3) of this section, ensure that the signed and completed form is available for the service planning team to review.

(k) During the service planning team meeting, the case manager must ensure:

(1) if the individual or LAR is requesting dental services other than an initial dental exam, the DADS Prior Authorization for Dental Services form has been signed by the dentist as described in §42.624(b) of this chapter (relating to Dental Treatment);

(2) an enrollment IPC is developed as described in §42.214 of this chapter; and

(3) if:

(A) the enrollment IPC includes transportation as a residential habilitation activity or as an adaptive aid, the service planning team develops a transportation plan; and or

(B) the enrollment IPC includes residential habilitation, nursing, specialized nursing, or CFC PAS/HAB:

(i) the service planning team determines whether the individual requires a service backup plan in accordance with §42.407 of this chapter (relating to Service Backup Plans); and

(ii) that a service backup plan is developed if needed.

(l) Within ten business days after the service planning team meeting, the case manager must:

(1) complete an enrollment Individual Program Plan (IPP) as described in §42.215 of this chapter (relating to Development of Enrollment Individual Program Plan (IPP));

(2) submit a request for enrollment to DADS for review as described in §42.216 of this chapter (relating to DADS Review of Request for Enrollment) that includes the following:

(A) a copy of the completed enrollment IPC;

(B) a copy of the ID/RC Assessment form signed by a physician;

(C) a copy of the completed enrollment IPP;

(D) a copy of the adaptive behavior screening assessment;

(E) a copy of the Related Conditions Eligibility Screening Instrument form;

(F) a copy of the DBMD Summary of Services Delivered form (for pre-assessment services) with supporting documentation;

(G) a copy of the Verification of Freedom of Choice, Waiver Program form;

(H) a copy of the Non-Waiver Services form;

(I) a copy of the Documentation of Provider Choice form;

(J) a copy of the DADS CLASS/DBMD Nursing Assessment form; and

(K) if applicable:

(i) Prior Authorization for Dental Services form;

(ii) Rationale for Adaptive Aids, Medical Supplies, and Minor Home Modifications form;

(iii) Provider Agency Model Service Backup Plan form;

(iv) Specialized Nursing Certification form;

(v) copies of letters of denial from non-waiver resources;

(vi) TAS Assessment and Authorization; and

(vii) a copy of the transportation plan;

(3) if the individual will receive a service through the CDS option, send a copy of the proposed enrollment IPC, the enrollment IPP, and if completed, the transportation plan to the FMSA; and

(4) keep the original ID/RC Assessment, signed by a physician, in the individual's record.

(m) Within five business days after receiving a written notice from DADS approving or denying the individual's request for enrollment, the program provider must notify the individual or LAR of DADS decision. If DADS:

(1) approves the request for enrollment, the program provider must initiate DBMD Program services and CFC services as described on the IPC; or

(2) denies the request for enrollment, the program provider must send the individual or LAR a copy of DADS written notice of denial.

(n) The program provider must not provide DBMD Program services or CFC services to an individual until notified by DADS that the individual's request for enrollment is approved. If a program provider provides DBMD Program services or CFC services to an individual before the effective date of service approved by DADS, DADS does not reimburse the program provider for those services.

(o) Within ten business days after receiving a written notice from DADS approving the individual's request for enrollment, the program provider must provide to the individual or LAR a copy of the approved enrollment IPC and IPP, and if a service backup plan is needed, a copy of the service backup plan.

§42.214. Development of Enrollment Individual Plan of Care (IPC).

(a) A program provider must ensure that an individual's case manager convenes a service planning team meeting in which the service planning team:

(1) develops an enrollment IPC that:

(A) identifies the type of each DBMD Program service and CFC service, other than CFC support management, to be provided to the individual;

(B) specifies the number of units of:

(i) each DBMD Program service to be provided to the individual; and

(ii) each CFC service, other than CFC support management, to be provided to the individual; and

(C) does not exceed the service limits described in:

(i) Subchapter F, Divisions 1 - 3, of this chapter (relating to Service Descriptions and Requirements) if the enrollment IPC includes adaptive aids, minor home modifications, dental treatment, and respite;

(ii) Subchapter F, Division 5, of this chapter if the enrollment IPC includes CFC ERS; or

(iii) §62.5(d) of this title (relating to Service Description) if the enrollment IPC includes TAS;

(D) specifies the frequency of each DBMD Program service and CFC service, other than CFC support management, to be provided to the individual;

(E) states if the individual will receive CFC support management;

(F) if the individual will receive TAS, includes the TAS and monetary amount authorized by DADS in accordance with §42.212(f)(5) of this chapter (relating to Process for Enrollment of an Individual);

(G) includes an effective date of service that:

(i) is at least 10 business days after submission of the enrollment IPC to DADS as described in §42.212(l)(2) of this chapter; and

(ii) does not overlap with the end date of another Medicaid waiver program or another DADS-operated program described in the *DBMD Provider Manual,* other than DAHS, in which the individual may have been enrolled; and

(H) identifies whether the individual needs a service backup plan for residential habilitation, nursing, specialized nursing, or CFC PAS/HAB services critical to the individual's health and safety;

(2) if the IPC includes transportation as a residential habilitation activity or as an adaptive aid, develops a transportation plan; and

(3) identifies the individual's non-waiver resources using the Non-Waiver Services form.

(b) A program provider must ensure that the DBMD Program services and CFC services, other than CFC support management, on the enrollment IPC:

(1) are necessary to protect the individual's health and welfare in the community;

(2) address at least one of the individual's related conditions or the additional disability that impairs independent functioning;

(3) supplement rather than replace the individual's natural supports and other non-waiver services and supports for which the individual is eligible;

(4) prevent the individual's admission to an institution;

(5) are the most appropriate type and amount of DBMD Program services and CFC services to meet the individual's needs; and

(6) are cost effective.

(c) A program provider must:

(1) ensure that the enrollment IPC is signed and dated by each member of the service planning team;

(2) submit a request for enrollment to DADS as described in §42.212(l)(2) of this subchapter; and

(3) maintain the original of the enrollment IPC in the individual's record.

(d) A program provider must maintain the following in the individual's record and provide copies to DADS upon request:

(1) current data obtained from standardized evaluations and formal assessments to support the individual's diagnoses in accordance with §42.201(a)(3) and (4) of this chapter (relating to Eligibility Criteria for DBMD Program Services and CFC Services);

(2) documentation, including assessments of the individual, that support the DBMD Program services and CFC services recommended on the IPC; and

(3) documentation that no other sources are available for DBMD Program services or CFC services recommended on the IPC.

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. REVIEW

40 TAC §§42.221 - 42.223

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

§42.223. Periodic Review and Update of IPC and IPP.

(a) Case manager's review.

(1) Beginning the effective date of service of an individual's IPC, as determined in accordance with §42.216(i) of this subchapter (relating to DADS Review of Request for Enrollment), a case manager must, in accordance with the schedule in the *DBMD Provider Manual,* meet face-to-face with the individual or LAR at a time and place acceptable to the individual or LAR to:

(A) review whether the DBMD Program services and CFC services are being provided as outlined in the IPC and IPP;

(B) review the individual's progress toward achieving the goals and objectives described in the IPP for each DBMD Program service and CFC service;

(C) determine if the services are meeting the individual's needs;

(D) determine if the individual's needs have changed;

(E) review assessments, evaluations, and progress notes prepared by service providers since the previous review;

(F) if the individual's IPC includes residential habilitation, nursing, specialized nursing, or CFC PAS/HAB, and none of these services are identified as critical to the individual's health and safety, discuss with the individual or LAR whether any of these services may now be critical to the individual's health and safety and needs a service backup plan; and

(G) if a service backup plan for residential habilitation, nursing, specialized nursing services, or CFC PAS/HAB has been implemented, discuss the implementation of the service backup plan with the individual or LAR to determine if the plan was effective.

(2) A case manager must:

(A) document the results of the review in the individual's record using the IPP review form;

(B) document on the IPP review form for an individual who has a service backup plan if the service backup plan was:

(i) implemented;

(ii) effective; and

(iii) revised by the service planning team to address any problems or concerns regarding implementation of the service backup plan; and

(C) provide a copy of the completed IPP review form to the individual or LAR within 10 business days after the date of the review.

(3) A case manager must convene a service planning team meeting within five business days after the date of a meeting described in paragraph (1) of this subsection if the case manager:

(A) identifies needed changes in the individual's services; or

(B) determines that residential habilitation, nursing, specialized nursing, or CFC PAS/HAB services may now be critical to the individual's health and safety, as described in paragraph (1)(F) of this subsection, or that the service backup plan was ineffective, as described in paragraph (1)(G) of this subsection.

(4) During a service planning team meeting described in paragraph (3) of this subsection, a case manager must:

(A) develop a revision IPC that meets the requirements described in §42.214(b)(1) - (6) of this subchapter (relating to Development of Enrollment Individual Plan of Care (IPC));

(B) develop a revision IPP that meets the requirements described in §42.215(2)(A) - (D) and (3)(A) - (G) of this subchapter (relating to Development and Enrollment Individual Program Plan (IPP)); and

(C) if:

(i) the revision IPC includes transportation as a residential habilitation activity or as an adaptive aid, develop a transportation plan; and

(ii) the revision IPC includes residential habilitation, nursing, specialized nursing, or CFC PAS/HAB services, ensure compliance with §42.407 of this chapter (relating to Service Backup Plans).

(5) A case manager must:

(A) ensure the revision IPC is signed and dated by each member of the service planning team; and

(B) within 10 business days after the date of the service planning meeting, submit to DADS:

(i) a copy of the completed revision IPC;

(ii) a copy of the revision IPP;

(iii) a copy of the most recent IPC approved by DADS; and

(iv) if applicable:

(I) Specifications for Minor Home Modifications form;

(II) Prior Authorization for Dental Services form;

(III) Rationale for Adaptive Aids, Medical Supplies, and Minor Home Modifications form;

(IV) Provider Agency Model Service Backup Plan form;

(V) Specialized Nursing Certification form;

(VI) an adaptive behavior screening assessment; and

(VII) a copy of the transportation plan.

(6) DADS reviews a revision IPC in accordance with §42.221 of this division (relating to Utilization Review of IPC by DADS) and may request additional assessments and supporting documentation related to the individual's diagnosis.

(7) If DADS requests the information described in paragraph (6) of this subsection, a case manager must submit the information to DADS within 10 calendar days after the date of the request.

(8) Within 10 business days after receiving a written notice from DADS authorizing services on a revision IPC, a case manager must:

(A) provide to the individual or LAR a copy of the revision IPC and revision IPP, and any new or revised service backup plan; and

(B) if the individual will receive a service through the CDS option, send a copy of the revision IPC, the revision IPP, and if completed, the transportation plan to the FMSA.

(9) A program provider must electronically access the Medicaid Eligibility Service Authorization Verification (MESAV) to verify that the services on the revision IPC have been authorized by DADS.

(b) Annual review by the service planning team.

(1) Within 90 calendar days before the end of an IPC period:

(A) an individual's case manager must convene a service planning team meeting to review the IPC and IPP; and

(B) an RN must complete an annual nursing assessment of the individual using the DADS CLASS/DBMD Nursing Assessment form.

(2) During the service planning team meeting:

(A) the service planning team must:

(i) develop a renewal IPC in accordance with §42.214(b)(1) - (6) of this subchapter and renewal IPP in accordance with §42.215(2)(A) - (D) and (3)(A) - (G) of this subchapter;

(ii) complete a renewal ID/RC Assessment in accordance with the *DBMD Provider Manual;*

(iii) if:

(I) the renewal IPC includes transportation as a residential habilitation activity or as an adaptive aid, develop a transportation plan; and

(II) the renewal IPC includes residential habilitation, nursing, specialized nursing, or CFC PAS/HAB services, ensure compliance with §42.407 of this chapter; and

(iv) ensure the renewal IPC is signed and dated by each member of the service planning team; and

(B) the case manager must:

(i) provide an oral and written explanation of the topics described in §42.212(c)(1)(A) - (L) of this subchapter (relating to Process for Enrollment of an Individual) to the individual or LAR;

(ii) orally explain to the individual or LAR that the individual may transfer to a different program provider;

(iii) give the individual or LAR the Documentation of Provider Choice form for the DADS region in which the individual resides;

(iv) orally explain to the individual or LAR that the individual may request a service planning team meeting to discuss the reason the provider declined the request to provide services outside the program provider's contracted service delivery area; and

(v) have documentation that the activities required under clauses (i) - (iv) of this subparagraph were performed.

(3) A case manager must, within 10 business days after the date of the service planning team meeting, but at least 30 calendar days before the end of the current IPC period, submit to DADS:

(A) a copy of the completed renewal IPC;

(B) a copy of the most recent IPC approved by DADS;

(C) a copy of the ID/RC Assessment;

(D) a copy of the renewal IPP;

(E) a copy of the Related Conditions Eligibility Screening Instrument;

(F) a copy of the Non-Waiver Services form;

(G) a copy of the Documentation of Provider Choice form;

(H) a copy of the DADS CLASS/DBMD Nursing Assessment form; and

(I) if applicable:

(i) an adaptive behavior screening assessment if the last assessment occurred five years prior or if significant changes have occurred;

(ii) Specifications for Minor Home Modifications form;

(iii) Prior Authorization for Dental Services form;

(iv) Rationale for Adaptive Aids, Medical Supplies, and Minor Home Modifications form;

(v) Provider Agency Model Service Backup Plan form;

(vi) Specialized Nursing Certification form; and

(vii) a copy of the transportation plan.

(4) DADS:

(A) reviews:

(i) a renewal IPC in accordance with §42.221 of this division; and

(ii) a renewal ID/RC Assessment in accordance with §42.222 of this division (relating to Annual Review and Reinstatement of Lapsed Diagnostic Eligibility); and

(B) may request additional assessments and supporting documentation related to the individual's diagnosis.

(5) If DADS requests the information described in paragraph (4)(B) of this subsection, a case manager must submit the information to DADS within 10 calendar days after the date of the request.

(6) Within 10 business days after receiving a written notice from DADS authorizing services on a renewal IPC, a case manager must:

(A) provide to the individual or LAR a copy of the renewal IPC and renewal IPP, and any new or revised service backup plan; and

(B) if the individual will receive a service through the CDS option, send a copy of the renewal IPC, the renewal IPP, and if completed, the transportation plan to the FMSA.

(7) A program provider must electronically access the Medicaid Eligibility Service Authorization Verification (MESAV) to verify that the services on a renewal IPC have been authorized by DADS.

(c) Review and revision in an emergency.

(1) If a program provider delivers a DBMD Program service or CFC PAS/HAB to an individual in an emergency to ensure the individual's health and welfare and the service is not on the IPC and IPP or exceeds the amount on the IPP, a case manager must:

(A) within five business days after providing the service, convene a service planning team meeting to review and revise the IPC in accordance with §42.214(b)(1) - (6) of this subchapter and a revision IPP in accordance with §42.215(2)(A) - (D) and (3)(A) - (G) of this subchapter and include on the revision IPP, documentation of how the requested services addressed the emergency;

(B) if the revision IPC includes residential habilitation, nursing, specialized nursing, or CFC PAS/HAB services, ensure compliance with §42.407 of this chapter;

(C) ensure the revision IPC is signed and dated by each member of the service planning team; and

(D) within 10 business days after the service planning meeting, submit to DADS:

(i) a copy of the completed revision IPC;

(ii) a copy of the revision IPP;

(iii) a copy of the most recent IPC approved by DADS; and

(iv) if applicable:

(I) Specifications for Minor Home Modifications form;

(II) Prior Authorization for Dental Services form;

(III) Rationale for Adaptive Aids, Medical Supplies, and Minor Home Modifications form;

(IV) Provider Agency Model Service Backup Plan form;

(V) Specialized Nursing Certification form; and

(VI) an adaptive behavior screening assessment.

(2) DADS:

(A) reviews the revision IPC in accordance with §42.221 of this division; and

(B) may request additional assessments and supporting documentation related to the individual's diagnosis.

(3) If DADS requests the information described in paragraph (2)(B) of this subsection, a case manager must submit the information to DADS within 10 calendar days after the date of the request.

(4) Within ten business days after receiving a written notice from DADS authorizing services on a revision IPC, a case manager must provide to the individual or LAR a copy of the revision IPC and revision IPP, and any new or revised service backup plan.

(5) A program provider must electronically access the Medicaid Eligibility Service Authorization Verification (MESAV) to verify that the services on the revision IPC have been authorized by DADS.

(d) Review and revision other than the reviews described in subsections (a) - (c) of this section.

(1) If a program provider becomes aware at any time during an individual's IPC period that changes to the individual's services may be necessary, the individual's case manager must:

(A) within five business days after becoming aware that changes to the individual's services may be necessary, convene a service planning team meeting to review and, if determined necessary, revise an IPC in accordance with §42.214(b)(1) - (6) of this subchapter

and IPP in accordance with §42.215(2)(A) - (D) and (3)(A) - (G) of this subchapter;

(B) if:

(i) the revision IPC includes transportation as a residential habilitation activity or as an adaptive aid, develop a transportation plan; and

(ii) the revision IPC includes residential habilitation, nursing, specialized nursing, or CFC PAS/HAB services, ensure compliance with §42.407 of this chapter;

(C) ensure the revised IPC is signed and dated by each member of the service planning team; and

(D) within 10 business days after the date of the service planning meeting, submit the following to DADS:

(i) a copy of the completed revision IPC;

(ii) a copy of the revision IPP;

(iii) a copy of the most recent IPC approved by DADS; and

(iv) if applicable:

(I) Specifications for Minor Home Modifications form;

(II) Prior Authorization for Dental Services form;

(III) Rationale for Adaptive Aids, Medical Supplies, and Minor Home Modifications form;

(IV) Provider Agency Model Service Backup Plan form;

(V) Specialized Nursing Certification form;

(VI) an adaptive behavior screening assessment; and

(VII) a copy of the transportation plan.

(2) DADS:

(A) reviews the revision IPC in accordance with §42.221 of this division; and

(B) may request additional assessments and supporting documentation related to the individual's diagnosis.

(3) If DADS requests the information described in paragraph (2)(B) of this subsection, a case manager must submit the information to DADS within 10 calendar days after the date of the request.

(4) Within 10 business days after receiving a written notice from DADS authorizing services on the revision IPC, a case manager must:

(A) provide to the individual or LAR a copy of the revision IPC and revision IPP, and any new or revised service backup plan; and

(B) if the individual will receive a service through the CDS option, send a copy of the revision IPC, the revision IPP, and if completed, the transportation plan to the FMSA.

(5) A program provider must electronically access the Medicaid Eligibility Service Authorization Verification (MESAV) to verify that the services on the revision IPC have been authorized by DADS.

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. TRANSFER BETWEEN PROGRAM PROVIDERS

40 TAC §42.231

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

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DIVISION 5. DENIAL, SUSPENSION, REDUCTION, AND TERMINATION

40 TAC §§42.241 - 42.248

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

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DIVISION 6. RIGHTS AND RESPONSIBILITIES OF AN INDIVIDUAL

40 TAC §42.251, §42.252

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

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SUBCHAPTER D. ADDITIONAL PROGRAM PROVIDER PROVISIONS

40 TAC §§42.402 - 42.405, 42.407

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

§42.403. Training.

(a) A program provider must ensure that a program director and all service providers complete a general orientation curriculum before assuming job duties and annually while holding the position of program director or service provider. The general orientation curriculum must include training on:

(1) the rights of an individual;

(2) confidentiality;

(3) abuse, neglect, and exploitation;

(4) the program provider's complaint process; and

(5) the DBMD Program and CFC, including the requirements of this chapter and the DBMD Program services and CFC services specified in §42.104 of this chapter (relating to Description of Deaf Blind with Multiple Disabilities (DBMD) Waiver Program and CFC).

(b) A program provider must ensure that, before assuming job duties, a program director, an intervener, and a service provider of licensed assisted living, licensed home health assisted living, case management, day habilitation, employment assistance, residential habilitation, respite, and supported employment completes and has current documentation of completion of hands-on skills training in:

(1) cardiopulmonary resuscitation (CPR);

(2) first aid; and

(3) choking prevention.

(c) A program provider must:

(1) ensure that a service provider required to complete hands-on skills training in accordance with subsection (b) of this section periodically updates hands-on skills training in accordance with guidelines of the training organization; and

(2) maintain a copy of current training documentation in the service provider's file.

(d) A program provider must ensure that a person who is a program director or case manager completes, within six months after assuming job duties:

(1) the DBMD Program case management training provided by DADS or training developed by the program provider that addresses the following elements from the DADS DBMD Program case management curriculum;

(A) the DBMD Program service delivery model:

(i) the role of the case manager and DBMD Program provider;

(ii) the role of the service planning team;

(iii) person-centered planning; and

(iv) the CDS option;

(B) DBMD Program services, including how these services:

(i) complement other Medicaid services;

(ii) supplement family supports and non-waiver services available in the individual's community; and

(iii) prevent institutionalization;

(C) DBMD Program process and procedures for:

(i) eligibility and enrollment;

(ii) service planning, service authorization, and program plans;

(iii) access to non-waiver resources; and

(iv) complaint procedures and the fair hearing process; and

(D) rules, policies, and procedures about:

(i) prevention of abuse, neglect, and exploitation of an individual;

(ii) reporting abuse, neglect, and exploitation to local and state authorities; and

(iii) financial improprieties toward an individual; and

(2) the Service Provider Curriculum required by DADS as described in subsection (e) of this section, if providing direct services to an individual.

(e) A program provider must ensure an intervener and a service provider of licensed assisted living, licensed home health assisted living, case management, day habilitation, employment assistance, nursing, specialized nursing, residential habilitation, respite, and supported employment:

(1) completes, within 90 calendar days after assuming job duties, the Service Provider Training provided by DADS or training developed by the program provider that addresses the following elements from the DADS Service Provider Training curriculum:

(A) methods and strategies for communication;

(B) active participation in home and community life;

(C) orientation and mobility;

(D) behavior as communication;

(E) causes and origins of deafblindness; and

(F) vision, hearing, and the functional implications of deafblindness; and

(2) who has not completed the Service Provider training is accompanied at all times while providing services to an individual by a service provider who has completed Service Provider Training.

(f) A program provider must ensure an intervener and a service provider of licensed assisted living, licensed home health assisted living, day habilitation, employment assistance, residential habilitation, respite, and supported employment, before providing direct services to an individual, annually, and when the individual's needs change, completes specific training that includes:

(1) the special needs of the individual, including the individual's:

(A) methods of communication;

(B) specific visual and audiological loss; and

(C) adaptive aids; and

(2) managing challenging behavior, including training in:

(A) prevention of aggressive behavior; and

(B) de-escalation techniques; and

(3) instruction in the individual's home with full participation by the individual, LAR, or other involved persons, as appropriate, concerning the specific tasks to be performed.

(g) If a program provider develops training based on DADS curriculum as described in subsections (d)(1) or (e)(1) of this section, the program provider must ensure that the instructor who delivers the training has completed the appropriate training provided by DADS.

(h) The program provider must ensure a service provider performing a delegated task is:

(1) trained to perform the delegated task in accordance with state law and rules:

(A) before providing direct services to an individual;

(B) annually; and

(C) when the individual's needs change; and

(2) supervised by a physician or nurse in accordance with state law and rules.

(i) The program provider must document the training described in subsections (d) and (e) of this section by a certificate or form letter that includes the:

(1) name of the person who received the training;

(2) date(s) the training was completed; and

(3) name of the person certifying the completion of the course.

(j) A program provider must ensure compliance with the training and training documentation requirements described in §42.408(c)(8) and (9) of this subchapter (relating to Protective Devices).

(k) A program provider must ensure compliance with the training and training documentation requirements described in §42.409(d)(3) of this subchapter (relating to Restraints).

(l) If requested by an individual or LAR, a program provider must:

(1) allow the individual or LAR to:

(A) train a CFC PAS/HAB service provider in the specific assistance needed by the individual; and

(B) have the service provider perform CFC PAS/HAB in a manner that comports with the individual's personal, cultural, or religious preferences; and

(2) ensure that a CFC PAS/HAB service provider attends training by HHSC or DADS so the service provider meets any additional qualifications desired by the individual or LAR.

(m) A program provider must ensure that a staff member who is responsible for developing the IPP for CFC PAS/HAB completes person-centered service planning training approved by HHSC:

(1) by June 1, 2017, if the staff member was hired on or before June 1, 2015; or

(2) within two years after hire, if the staff member is hired after June 1, 2015.

§42.404. Service Delivery.

(a) A program provider must ensure that:

(1) a full-time case manager is assigned to provide case management services to no more than 30 individuals or other persons receiving services through another Medicaid waiver at one time;

(2) a part-time case manager is assigned to provide case management services to no more than 15 individuals or other persons receiving services through another Medicaid waiver at one time; and

(3) for a month in which a case manager does not meet with an individual or LAR as required by §42.223(a) of this chapter (relating to Periodic Review and Update of IPC and IPP), the case manager has a face-to-face or telephone contact with the individual, LAR, primary caregiver, or actively involved family members and friends, to provide case management.

(b) In determining the number of individuals or other persons receiving services through another Medicaid waiver at one time to whom a case manager will be assigned, the program provider must take into consideration:

(1) the intensity of needs of each individual or person;

(2) the frequency and duration of contacts the case manager will need to make with the individual or person; and

(3) the amount of travel time involved in making such contacts.

(c) A program provider must have:

(1) a sufficient number of case managers available at all times to ensure the provision of case management services; and

(2) a written process that ensures a case manager can readily become familiar with an individual to whom the case manager is not ordinarily assigned but to whom the case manager may be required to provide case management services.

(d) A program provider must have written policies and procedures that ensure backup service providers are or can readily become familiar with individuals to whom they are not ordinarily assigned but to whom they may be required to deliver services.

(e) A program provider must provide each DBMD Program service and CFC service authorized in an individual's IPC in accordance with:

(1) the individual's current IPC;

(2) the individual's current IPP; and

(3) the requirements in this chapter.

(f) A program provider must:

(1) provide or ensure the provision of each DBMD Program service listed in §42.104(d) of this chapter (relating to Description of Deaf Blind with Multiple Disabilities (DBMD) Waiver Program and CFC);

(2) provide the assisted living service as either licensed assisted living or licensed home health assisted living in accordance with §42.630 of this chapter (relating to Residential Services);

(3) provide or ensure the provision of each CFC service listed in §42.104(f)(1) - (3) of this chapter; and

(4) ensure that CFC support management is provided to an individual or LAR as described in the DBMD Provider Manual if:

(A) the individual is receiving CFC PAS/HAB; and

(B) the individual or LAR requests to receive CFC support management.

(g) A program provider must offer an individual choices and opportunities for accessing and participating in community activities, including employment opportunities and experiences available to peers without disabilities, and provide supports necessary for the individual to participate in such activities consistent with an individual's or LAR's choice and the individual's IPC and IPP.

(h) A program provider may accept or decline the request of an individual or LAR for the provision of residential habilitation, nursing, out-of-home respite in a camp, case management, adaptive aids, intervener services, or CFC PAS/HAB to the individual while the individual is temporarily staying at a location outside the program provider's contracted service delivery area but within the state of Texas.

(i) If the program provider accepts the request of an individual or LAR, as described in subsection (h) of this section, the program provider:

(1) may provide residential habilitation, nursing, out-of-home respite in a camp, adaptive aids, intervener services, CFC PAS/HAB, and case management services as described in §42.623(a)(2) - (4)(A), (B), and (D) of this chapter (relating to Case Management) as well as by telephone contact with the individual;

(2) must document in the service delivery log:

(A) that the individual is receiving services outside the program provider's contracted service delivery area;

(B) the location where the individual is receiving the services;

(C) the estimated length of time the individual is expected to be outside the program provider's contracted service delivery area; and

(D) contact information for the individual or LAR;

(3) must, if the individual receives services outside the program provider's contracted service delivery area for 30 consecutive days, inform the individual or LAR, on or before the 35th day, that:

(A) to ensure the continued provision of the services, the individual must do one of the following before the 61st day:

(i) transfer to a program provider that has a contracted service delivery area that includes the area in which the individual is receiving the services; or

(ii) return to the program provider's contracted service delivery area; and

(B) if the individual receives services outside the program provider's contracted service delivery area during a period of 60 consecutive days, the individual must return to the contracted service delivery area and receive services in that area before the program provider may accept another request from the individual or LAR for the provision of the services outside the program provider's contracted service delivery area; and

(4) must, if the individual expresses a desire for the individual to transfer to a program provider that has a contracted service delivery area that includes the area in which the individual is receiving services:

(A) give the individual and LAR the Documentation of Provider Choice form for the contracted service delivery area in which the individual is receiving the services;

(B) have the individual or LAR select a program provider and designate that selection on the Documentation of Provider Choice form; and

(C) coordinate the individual's transfer in accordance with §42.231 of this chapter (relating to Coordination of Transfers).

(j) If the program provider declines the request of an individual or LAR as described in subsection (h) of this section, the program provider must:

(1) inform the individual or LAR orally or in writing:

(A) of the reasons for declining the request; and

(B) that the individual may request a service planning team meeting to discuss the reasons for declining the request; and

(2) document the discussion and the final outcome if the service planning team meeting is held.

(k) If a program provider or case manager is unable to meet a timeframe specified in this chapter, it must be for a reason not directly caused by the program provider or case manager, or for a reason beyond the program provider's or case manager's control, such as a man-made or natural disaster. The program provider or case manager must document the program provider's or case manager's efforts to meet a timeframe and maintain the documentation in the individual's record. The documentation must include:

(1) the reason the timeframe could not be met, which must be beyond the program provider's or case manager's control; and

(2) a description of the program provider's or case manager's ongoing efforts to meet a timeframe.

§42.405. Recordkeeping Requirements.

(a) A program provider must ensure that an individual's record includes the following:

(1) the individual's current IPC and each revision IPC for the current IPC period;

(2) the individual's current IPP and each revision IPP for the current IPC period;

(3) the individual's current ID/RC Assessment and the last ID/RC Assessment signed by a physician or, if applicable, the last level of care form signed by a physician;

(4) current adaptive behavior screening assessment;

(5) Summary of Services Delivered form completed as described in the *DBMD Provider Manual;*

(6) any other relevant documentation supporting services on the IPC;

(7) documentation of the progress or lack of progress in achieving goals or outcomes in observable, measurable terms that directly relate to the specific goal or objective addressed to include:

(A) assessments, evaluations, and progress notes submitted to a case manager by a service provider for review in accordance with §42.223(a)(1)(E) of this chapter (relating to Periodic Review and Update of IPC and IPP);

(B) the IPP reviews for the current IPC period prepared by a case manager in accordance with §42.223(a)(2) of this chapter; and

(C) for day habilitation, residential habilitation, and CFC PAS/HAB, the individual's progress or lack of progress in achieving the following outcomes:

(i) the ability to effectively communicate the individual's wants and needs to a day habilitation, residential habilitation, or CFC PAS/HAB service provider;

(ii) the ability to actively participate in activities of daily living to the extent of the individual's ability;

(iii) the ability to implement the individual's choices;

(iv) the ability to access and participate in community activities; and

(v) the ability to move safely and efficiently within the day habilitation, residential habilitation, or CFC PAS/HAB setting.

(8) the Verification of Freedom of Choice form designating the individual's or LAR's choice regarding enrollment in the DBMD Program over enrollment in the ICF/IID Program;

(9) the Documentation of Provider Choice form documenting the individual's or LAR's choice of a program provider;

(10) if applicable, any new or revised Provider Agency Model Service Backup Plan form for residential habilitation, nursing, specialized nursing, or CFC/PAS HAB for the current IPC period;

(11) if the IPC includes transportation as a residential habilitation activity or as an adaptive aid, a copy of the individual's transportation plan;

(12) if a protective device is used, the documentation required by §42.408 of this subchapter (relating to Protective Devices); and

(13) if a restraint is used, the documentation required by §42.409 of this subchapter (relating to Restraints).

(b) In addition to the requirements in subsection (a) of this section, a program provider must ensure a service provider documents service activities in the individual's record, including:

(1) the date, the time service activities begin and end, and the duration of contact;

(2) the type of contact (phone or face to face);

(3) the person with whom the contact occurred;

(4) a description of the service activities provided, unless the service activity provided is a non-delegated task provided by an unlicensed service provider that is documented on the IPP; and

(5) the signature and title of the service provider.

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SUBCHAPTER F. SERVICE DESCRIPTIONS AND REQUIREMENTS
DIVISION 3. REQUIREMENTS FOR OTHER DBMD PROGRAM SERVICES

40 TAC §§42.621, 42.623, 42.625, 42.626, 42.628, 42.630 - 42.632

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

§42.625. Employment Services.

(a) A program provider must ensure that a service provider of employment assistance or a service provider of supported employment meets the qualifications described in §42.402(g) of this chapter (relating to Qualifications of Program Provider Staff).

(b) Before including employment assistance on an individual's IPC, a program provider must ensure and maintain documentation in the individual's record that employment assistance is not available to the individual under a program funded under §110 of the Rehabilitation Act of 1973 or under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.).

(c) The program provider must ensure that employment assistance:

(1) consists of a service provider performing the following activities:

(A) identifying an individual's employment preferences, job skills, and requirements for a work setting and work conditions;

(B) locating prospective employers offering employment compatible with an individual's identified preferences, skills, and requirements;

(C) contacting a prospective employer on behalf of an individual and negotiating the individual's employment;

(D) transporting the individual to help the individual locate competitive employment in the community; and

(E) participating in service planning team meetings;

(2) is provided in accordance with the individual's IPC and with Appendix C of the DBMD waiver application approved by CMS and found at www.dads.state.tx.us;

(3) is not provided to an individual with the individual present at the same time that one of the following services is provided:

(A) day habilitation;

(B) residential habilitation;

(C) supported employment;

(D) respite; or

(E) CFC PAS/HAB; and

(4) does not include using Medicaid funds paid by DADS to the program provider for incentive payments, subsidies, or unrelated vocational training expenses, such as:

(A) paying an employer:

(i) to encourage the employer to hire an individual; or

(ii) for supervision, training, support, or adaptations for an individual that the employer typically makes available to other workers without disabilities filling similar positions in the business; or

(B) paying the individual:

(i) as an incentive to participate in employment assistance activities; or

(ii) for expenses associated with the start-up costs or operating expenses of an individual's business.

(d) Before including supported employment on an individual's IPC, a program provider must ensure and maintain documentation in the individual's record that supported employment is not available to the individual under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.).

(e) A program provider must ensure that supported employment:

(1) consists of a service provider performing the following activities:

(A) making employment adaptations, supervising, and providing training related to an individual's assessed needs;

(B) transporting the individual to support the individual to be self-employed, work from home, or perform in a work setting; and

(C) participating in service planning team meetings;

(2) is provided in accordance with the individual's IPC and with Appendix C of the DBMD waiver application approved by CMS and found at www.dads.state.tx.us;

(3) is not provided to an individual with the individual present at the same time that one of the following services are provided:

(A) day habilitation;

(B) residential habilitation;

(C) employment assistance;

(D) respite; or

(E) CFC PAS/HAB; and

(4) does not include:

(A) sheltered work or other similar types of vocational services furnished in specialized facilities; or

(B) using Medicaid funds paid by DADS to the program provider for incentive payments, subsidies, or unrelated vocational training expenses, such as:

(i) paying an employer:

(I) to encourage the employer to hire an individual; or

(II) to supervise, train, support, or make adaptations for an individual that the employer typically makes available to other workers without disabilities filling similar positions in the business; or

(ii) paying the individual:

(I) as an incentive to participate in supported employment activities; or

(II) for expenses associated with the start-up costs or operating expenses of an individual's business.

§42.626. Day Habilitation, Residential Habilitation, and CFC PAS/HAB.

(a) Day habilitation.

(1) A program provider must ensure day habilitation:

(A) is provided in a non-residential setting separate from the individual's own or family home or the residence in which the individual receives licensed assisted living or licensed home health assisted living that:

(i) is accessible to and usable by the individual;

(ii) is maintained in good repair;

(iii) has at least two means of egress; and

(iv) is in continuous compliance with applicable local building codes and ordinances and applicable state and federal laws, rules, and regulations;

(B) reinforces:

(i) therapeutic outcomes identified by other DBMD Program services and CFC services; and

(ii) for an individual eligible for public education services, education goals in the Individualized Education Program (IEP) and services provided by the school district;

(C) includes transportation necessary for the individual's participation in day habilitation activities;

(D) is not provided to the individual at the same time that one of the following services is provided:

(i) employment assistance with the individual present;

(ii) supported employment with the individual present;

(iii) residential habilitation;

(iv) respite; or

(v) CFC PAS/HAB.

(2) A program provider must ensure a day habilitation service provider works with one individual at a time unless the individual's service planning team documents on the IPP that the individual's needs can be met with a day habilitation service provider to individual ratio of one-to-two or one-to-three.

(3) A program provider must ensure that for a service-provider-to-individual ratio higher than one-to-three, that the IPP includes a recommendation from the service planning team and supporting documentation of the individual's ability to integrate and meaningfully participate in an environment with a ratio higher than one-to-three.

(4) A program provider must ensure a day habilitation service provider:

(A) develops and implements a written emergency response plan that describes the actions the day habilitation service provider will take in the event of an emergency such as a fire or other man-made or natural disaster at a day habilitation site including evacuation or sheltering-in-place of the individual, as appropriate;

(B) takes into account the needs and abilities of the individual in developing the emergency response plan;

(C) requires its staff members to demonstrate competency in implementation of the emergency response plan at the time job duties are assumed and annually thereafter;

(D) reviews the emergency response plan at least annually and, if necessary, revises the plan;

(E) maintains a copy of the current emergency response plan in a location that is easily accessible by all staff at the day habilitation site;

(F) conducts a fire drill at least once every 90 calendar days; and

(G) documents that requirements in subparagraphs (C) - (F) of this paragraph are met.

(5) A program provider may bill for time spent by a day habilitation service provider:

(A) in direct contact with an individual;

(B) participating as a member of an individual's service planning team; or

(C) performing tasks delegated by a physician or RN.

(b) Residential habilitation.

(1) A program provider must ensure:

(A) residential habilitation:

(i) is not provided to an individual receiving licensed assisted living or licensed home health assisted living;

(I) in the individual's own or family home; or

(II) in a setting outside the individual's own or family home appropriate for the type of residential habilitation activities described in the individual's IPP;

(ii) includes:

(I) transportation; or

(II) assistance in securing transportation;

(III) assistance with ambulation and mobility;

(IV) reinforcement of behavioral support or therapy activities;

(V) assistance with medications and the performance of tasks delegated by an RN in accordance with state law;

(VI) supervision of the individual's safety and security;

(VII) assistance with acquisition, retention, or improvement in skills related to activities of daily living, including:

(-a-) personal grooming and cleanliness;
(-b-) bed making and household chores; and
(-c-) preparation and consumption of food;

(VIII) use of natural supports and typical community services; and

(IX) social interaction and participation in leisure activities; and

(iii) is not provided to the individual at the same time that one of the following services are provided:

(I) employment assistance with the individual present;

(II) supported employment with the individual present;

(III) day habilitation;

(IV) respite; or

(V) CFC PAS/HAB;

(B) a residential habilitation service provider works with no more than one individual at a time; and

(C) if an individual's IPC includes residential habilitation, compliance with §42.407 of this chapter (relating to Service Backup Plans).

(2) A program provider may bill for time spent by a residential habilitation service provider transporting an individual.

(c) CFC PAS/HAB.

(1) A program provider must ensure CFC PAS/HAB is not provided to an individual receiving licensed assisted living or licensed home health assisted living.

(2) A program provider must ensure CFC PAS/HAB is not provided to the individual at the same time that one of the following services are provided:

(A) employment assistance with the individual present;

(B) supported employment with the individual present;

(C) day habilitation;

(D) respite; or

(E) residential habilitation.

(3) A program provider must ensure a CFC PAS/HAB service provider works with no more than one individual at a time.

(4) If an individual's IPC includes CFC PAS/HAB, a program provider must ensure compliance with §42.407 of this chapter (relating to Service Backup Plans).

§42.631. Respite.

(a) General.

(1) A program provider may deliver respite as:

(A) in-home respite; or

(B) out-of-home respite.

(2) A program provider must not:

(A) bill DADS for more than 30 calendar days or 720 hours of respite per IPC period;

(B) provide respite to an individual receiving licensed assisted living or licensed home health assisted living;

(C) permit an individual's spouse or a service provider of residential habilitation or CFC PAS/HAB with whom the individual lives to provide respite; or

(D) provide respite to an individual at the same time that one of the following services are provided to the individual:

(i) employment assistance with the individual present;

(ii) supported employment with the individual present;

(iii) day habilitation;

(iv) residential habilitation; or

(v) CFC PAS/HAB.

(3) A program provider must ensure that a respite service provider meets the qualifications described in §42.402 of this chapter (relating to Qualifications of Program Provider Staff) and the training requirements described in §42.403 of this chapter (relating to Training).

(b) In-home respite. A program provider must ensure that in-home respite is provided in the private residence of:

(1) the individual;

(2) the individual's family; or

(3) a respite service provider.

(c) Out-of-home respite.

(1) A program provider must ensure that out-of-home respite is provided in a location listed in paragraph (2) of this subsection acceptable to the individual or LAR that:

(A) is an accessible, safe, and comfortable environment for the individual; and

(B) promotes the individual's health and welfare.

(2) A program provider must provide out-of-home respite in one of the following:

(A) an ICF/IID with a certified capacity of six or less persons;

(B) an ALF with a licensed capacity of six or less persons; or

(C) an outdoor camp accredited by the American Camping Association.

(3) A program provider may provide out-of-home respite in a residence in which licensed assisted living or licensed home health assisted living is provided if:

(A) a vacancy exists in the residence;

(B) the individual or LAR approves; and

(C) the service planning team for each individual receiving services in that residence makes a determination that the respite visit will cause no threat to the health, safety and welfare, or rights and needs of that individual.

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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Department of Aging and Disability Services
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DIVISION 4. ADDITIONAL REQUIREMENTS

40 TAC §42.641

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

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

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DIVISION 5. CFC ERS

40 TAC §42.651

The new rule is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

§42.651. CFC ERS.

(a) A program provider must ensure that CFC ERS is provided only to an individual:

(1) who is not receiving licensed assisted living or home health licensed assisted living; and

(2) who:

(A) lives alone, who is alone for significant parts of the day, or has no regular caregiver for extended periods of time; and

(B) would otherwise require extensive routine supervision.

(b) Installing equipment.

(1) A program provider must ensure that CFC ERS equipment is installed within 14 business days after one of the following dates, whichever is later:

(A) the date DADS authorizes the proposed IPC that includes CFC ERS; or

(B) the effective date of the individual's IPC as determined by the service planning team.

(2) At the time CFC ERS equipment is installed, a program provider must ensure that:

(A) the equipment is installed in accordance with the manufacturer's installation instructions;

(B) an initial test of the equipment is made;

(C) the equipment has an alternate power source in the event of a power failure;

(D) the individual is trained on the use of the equipment, including:

(i) demonstrating how the equipment works; and

(ii) having the individual activate an alarm call;

(E) an explanation is given to the individual that the individual must:

(i) participate in a system check each month; and

(ii) contact the CFC ERS provider if:

(I) the individual's telephone number or address changes; or

(II) one or more of the individual's responders change; and

(F) the individual is informed that a responder, in response to an alarm call, may forcibly enter the individual's home if necessary.

(3) A program provider must ensure that the date and time of the CFC ERS equipment installation and compliance with the requirements in paragraphs (1) and (2) of this subsection are documented in the individual's record.

(c) Securing responders. A program provider must ensure that, on or before the date CFC ERS equipment is installed:

(1) an attempt is made to obtain from an individual, the names and telephone numbers of at least two responders, such as a relative or neighbor;

(2) public emergency personnel:

(A) is designated as a second responder if the individual provides the name of only one responder; or

(B) is designated as the sole responder if the individual does not provide the names of any responders; and

(3) the name and telephone number of each responder is documented in the individual's record.

(d) Conducting a system check.

(1) At least once during each calendar month a program provider must ensure that a system check is conducted on a date and time agreed to by the individual.

(2) A program provider must ensure that the date, time, and result of the system check is documented in the individual's record.

(3) If, as a result of the system check:

(A) the equipment is working properly but the individual is unable to successfully activate an alarm call, the program provider must ensure that a request is made of the case manager to convene a service planning team meeting to determine if CFC ERS meets the individual's needs; or

(B) the equipment is not working properly, the program provider must ensure that, within three calendar days of the system check, the equipment is repaired or replaced.

(e) Failing to complete a system check. If a system check is not conducted in accordance with subsection (d)(1) of this section, the program provider must ensure that:

(1) the failure to comply is because of good cause; and

(2) the good cause is documented in the individual's record.

(f) Alarm call.

(1) A program provider must ensure that an alarm call is responded to 24 hours a day, seven days a week.

(2) A program provider must ensure that, if an alarm call is made, the CFC ERS provider:

(A) within 60 seconds of the alarm call, attempts to contact the individual to determine if an emergency exists;

(B) immediately contacts a responder, if as a result of attempting to contact the individual:

(i) the CFC ERS provider confirms there is an emergency; or

(ii) the CFC ERS provider is unable to communicate with the individual; and

(C) documents the following information in the individual's record when the information becomes available:

(i) the name of the individual;

(ii) the date and time of the alarm call, recorded in hours, minutes, and seconds;

(iii) the response time, recorded in seconds;

(iv) the time the individual is called in response to the alarm call, recorded in hours, minutes, and seconds;

(v) the name of the contacted responder, if applicable;

(vi) a brief description of the reason for the alarm call; and

(vii) if the reason for the alarm call is an emergency, a statement of how the emergency was resolved.

(3) If an alarm call results in a responder being dispatched to the individual's home for an emergency, the program provider must ensure that:

(A) the case manager receives written notice of the alarm call within one business day after the alarm call;

(B) if the CFC ERS provider is a contracted provider, the program provider receives written notice from the contracted provider within one business day after the alarm call; and

(C) the written notices required by subparagraphs (A) and (B) of this paragraph is maintained in the individual's record.

(g) Equipment failure.

(1) A program provider must ensure that, if an equipment failure occurs, other than during a system check required by subsection (d)(1) of this section:

(A) the individual is informed of the equipment failure; and

(B) the equipment is replaced within one business day after the failure becomes known by the CFC ERS provider.

(2) If an individual is not informed of the equipment failure and the equipment is not replaced in compliance with paragraph (1) of this subsection, the program provider must ensure that:

(A) the failure to comply is because of good cause; and

(B) as soon as possible, the individual is informed of the equipment failure and the equipment is replaced.

(h) Low battery.

(1) A program provider must ensure that, if the ERS equipment registers five or more "low battery" signals in a 72-hour period:

(A) a visit to an individual's home is made to conduct a system check within five business days after the low battery signals occur; and

(B) if the battery is defective, the battery is replaced during the visit.

(2) A program provider must ensure that, if a system check or battery replacement is not made in accordance with paragraph (1) of this subsection:

(A) the failure to comply is because of good cause; and

(B) as soon as possible, a system check and battery replacement is made.

(i) Documenting equipment failure or low battery. A program provider must ensure that the following information is documented in an individual's record:

(1) the date the equipment failure or low battery signal became known by the CFC ERS provider;

(2) the equipment or subscriber number;

(3) a description of the problem;

(4) the date the equipment or battery was repaired or replaced; and

(5) the good cause for failure to comply as described in subsection (g)(2) and subsection (h)(2) of this section.

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

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CHAPTER 45. COMMUNITY LIVING ASSISTANCE AND SUPPORT SERVICES

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), amendments to §§45.101, 45.103, and 45.104, in Subchapter A, General Provisions; §§45.201, 45.212 - 45.217, 45.221, 45.223 - 45.225, and 45.231, in Subchapter B, Eligibility, Enrollment, and Review; §45.301 and §45.302, in Subchapter C, Rights and Responsibilities of an Individual; §§45.402 - 45.409, in Subchapter D, Transfer, Denial, Suspension, Reduction, and Termination of Services; §45.505, in Subchapter E, Support Family Services; §§45.702, 45.704, and 45.705, in Subchapter G, Additional CMA Requirements; §§45.803 - 45.805, 45.807, and 45.808, in Subchapter H, Additional DSA Requirements; and §45.902, in Subchapter I, Fiscal Monitoring; and new §45.621, in Subchapter F, Adaptive Aids and Minor Home Modifications, in Chapter 45, Community Living Assistance and Support Services. Amendments to §§45.103, 45.104, 45.201, 45.214, 45.215, 45.702, and 45.804, and new §45.621 are adopted with changes to the proposed text as published in the November 27, 2015, issue of the *Texas Register* (40 TexReg 8589). The rules will be republished. Amendments to §§45.101, 45.212, 45.213, 45.216, 45.217, 45.221, 45.223 - 45.225, 45.231, 45.301, 45.302, 45.402 - 45.409, 45.505, 45.704, 45.705, 45.803, 45.805, 45.807, 45.808, and 45.902 are adopted without changes to the proposed text. The rules will not be republished.

The adopted rules in Chapter 45 implement Community First Choice (CFC), a Medicaid state plan option governed by the Code of Federal Regulations, Title 42 (42 CFR), Chapter 441, Subchapter K, regarding Home and Community-Based Attendant Services and Supports State Plan Option (Community First Choice). CFC services are available to individuals enrolled in the DADS §1915(c) waiver programs of the Community Living Assistance and Support Services (CLASS) Program, the Home and Community-based Services (HCS) Program, Texas Home Living (TxHmL) Program, and the Deaf-Blind with Multiple Disabilities (DBMD) Program. CFC is authorized by Texas Government Code §534.152 and is governed by rules of the Texas Health and Human Services Commission in Texas Administrative Code, Title 1, Chapter 354, Medicaid Health Services, Subchapter A, Purchased Health Services, Division 27, Community First Choice (CFC). The Centers for Medicare and Medicaid Services (CMS) approved a state plan amendment to implement CFC effective June 1, 2015. Texas Government Code, §534.152(g) authorizes DADS to contract with providers participating in the CLASS, HCS, TxHmL, and DBMD Programs for the delivery of basic attendant and habilitation services through CFC and gives DADS regulatory and oversight authority over those providers.

CFC services in the CLASS Program consists of: (1) CFC personal assistance services/habilitation (CFC PAS/HAB), which provides all the activities of habilitation, except transportation; (2) CFC emergency response services (CFC ERS), which is provided as a distinct CFC service instead of as an adaptive aid; and (3) CFC support management. The adopted rules give an individual the option to receive CFC PAS/HAB through a CLASS direct services agency (DSA) or the consumer directed services (CDS) option.

The adopted rules also require a case manager to ensure that the service planning team develops a transportation plan if transportation as a habilitation activity or as an adaptive aid is included on the individual plan of care (IPC). The transportation plan is used to document how transportation will be delivered to support an individual's desired outcomes and purposes for transportation as identified in the individual program plan (IPP). The plan helps ensure that the transportation hours requested are in the most appropriate amount, are cost effective, and are necessary to enable an individual's independence and integration in the community.

The adopted rules, for consistency with the CLASS waiver application, add to the eligibility criteria for the CLASS Program that an individual must require the provision of: (1) at least one program service per month or monthly monitoring; and (2) at least one program service per IPC period. The adopted rules also require the case management agency (CMA) to ensure that, for a month in which a case manager does not meet with an individual or LAR as required by §45.223(a), the case manager has a face-to-face or telephone contact with the individual or LAR or other persons acting on behalf of the individual, such as an advocate or family member, to provide case management to help ensure an individual's continued eligibility for the CLASS program.

The adopted rules require a service provider of respite who is hired on or after July 1, 2015 to have (1) a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma; or (2) a successfully completed written competency-based assessment demonstrating the service provider's ability to assist with activities of daily living and independent activities of daily living required for the individual to whom the service provider will provide habilitation or respite and at least three written personal references from persons who are not relatives of the service provider that evidence the service provider's ability to provide a safe and healthy environment for the individual. This new qualification for a respite service provider is consistent with the CLASS waiver application and with qualifications for a respite service provider in other DADS waiver programs.

The adopted rules also make editorial changes for clarity.

A change was made in §45.103(19) to delete the reference to §45.621(a) because licensure as a personal emergency response system provider is no longer a requirement and §45.621(a) has been deleted.

A change was made in §45.103(21) to clarify that CFC PAS/HAB does not include transporting the individual and to clarify that "transporting" means "driving the individual from one location to another."

A change was made in §45.103(93) to add a reference to a new CFC service because an IPC would also be revised to add a new CFC service or change the amount of a CFC service.

A change was made in §45.104(e) to correct a reference to a rule.

A change was made in §45.201(b) to correct a reference to a rule.

A change was made in §45.201(c) to clarify that an individual is not eligible for a CFC service if the individual is receiving support family services or continued family services. Minor editorial changes were also made in §45.201(c).

A change was made in §45.201(d) to reference the CFC eligibility criteria in §45.201(c), including the requirement that the individual is not receiving support family services or continued family services, instead of restating the criteria in §45.201(d).

A change was made in §45.214(a)(1)(B)(vii) to add "habilitation" because habilitation is a service listed in §45.231(a).

A change was made in §45.215(a)(1) to correct the name of "CFC support management."

A change was made in §45.215(a)(2) to clarify that an IPP is not required for CFC support management.

A change was made in §45.621 to delete subsection (a), which required a DSA and a contractor of the DSA to have a license as a personal emergency response system provider in accordance with 25 TAC Chapter 140, Subchapter B. The agency made the change because Health and Safety Code, Chapter 781, regarding licensure of personal emergency response system providers, was repealed by Senate Bill 202 (84th Texas Legislature, Regular Session, 2015) and, therefore, licensure as a personal emergency response system is no longer available.

An editorial correction was made in §45.702(c)(3) to add "and" between subparagraphs (A) and (B).

A change was made in §45.804 to change the word "completing" to "developing" to make the provision consistent with terminology in the definition of "PAS/HAB plan" in §45.103(77) and to clarify which staff are required to complete person-centered service planning training.

DADS received written comments from the Texas Association for Home Care and Hospice. A summary of the comments and the responses follows.

Comment: Regarding §45.103(21), A commenter suggested that the definitions of "habilitation" and "personal assistance services" should be consistent with the definitions in Texas Government Code, §534.001, and in the HCSSA license rules.

Response: The definition in §45.103(21) of "CFC PAS/HAB--CFC personal assistance services/habilitation," which contains a description of "personal assistance services" and "habilitation," is derived from the approved CFC state plan amendment and does not conflict with the definition of "personal assistance services" or "habilitation" in Texas Health and Safety Code, §142.001, or the definition of "habilitation services" in Texas Government Code, §534.001. The agency did not make a change in response to this comment.

Comment: A commenter stated that health maintenance activities do not need to be delegated by a registered nurse and requested that the definition of "health-related tasks" in §45.103 include a statement that "these include tasks delegated by a registered nurse and health related tasks that do not require delegation as defined in 22 TAC §225.4 (relating to Definitions)."

Response: Health maintenance activities, as defined in 22 TAC §225.4, may be exempt from delegation or may require delegation, depending on an assessment by a registered nurse. For clarification, the agency made a change in §45.103(46) to include health maintenance activities that may not require delegation as an example of "health-related tasks."

Comment: A commenter suggested adding a service provider of CFC PAS/HAB in the qualifications in §45.803(d)(20) that apply to a service provider of habilitation or respite.

Response: Section 45.803(d)(20) states the qualifications for a service provider of habilitation or respite who is hired on or after July 1, 2015. The qualifications for a service provider of CFC PAS/HAB are stated in §45.803(d)(23). The agency did not make a change in response to the comment.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§45.101, 45.103, 45.104

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human

Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

§45.103. Definitions.

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

(1) Actively involved--Significant, ongoing, and supportive involvement with an individual by a person, as determined by the individual, based on the person's:

(A) interactions with the individual;

(B) availability to the individual for assistance or support when needed; and

(C) knowledge of, sensitivity to, and advocacy for the individual's needs, preferences, values, and beliefs.

(2) Adaptive aid--An item or service that enables an individual to retain or increase the ability to perform ADLs or perceive, control, or communicate with the environment in which the individual lives, and:

(A) is included in the list of adaptive aids in the *CLASS Provider Manual;* or

(B) is the repair and maintenance of an adaptive aid on such list that is not covered by a warranty.

(3) Adaptive behavior--The effectiveness with or degree to which an individual meets the standards of personal independence and social responsibility expected of the individual's age and cultural group as assessed by a standardized measure.

(4) Adaptive behavior level--The categorization of an individual's functioning level based on a standardized measure of adaptive behavior. Four levels are used ranging from mild limitations in adaptive skills (I) through profound limitations in adaptive skills (IV).

(5) Adaptive behavior screening assessment--A standardized assessment used to determine an individual's adaptive behavior level, and conducted using one of the following assessment instruments:

(A) American Association of Intellectual and Developmental Disabilities (AAIDD) Adaptive Behavior Scales (ABS);

(B) Inventory for Client and Agency Planning (ICAP);

(C) Scales of Independent Behavior--Revised (SIB-R); or

(D) Vineland Adaptive Behavior Scales, Second Edition (Vineland-II).

(6) ADLs--Activities of daily living. Basic personal everyday activities, including tasks such as eating, toileting, grooming, dressing, bathing, and transferring.

(7) Alarm call--A signal transmitted from an individual's CFC ERS equipment to the CFC ERS response center indicating that the individual needs immediate assistance.

(8) Aquatic therapy--A service that involves a low-risk exercise method done in water to improve an individual's range of motion, flexibility, muscular strengthening and toning, cardiovascular endurance, fitness, and mobility.

(9) Auditory integration training/auditory enhancement training--Specialized training that assists an individual to cope with hearing dysfunction or over-sensitivity to certain frequency ranges of sound by facilitating auditory processing skills and exercising the middle ear and auditory nervous system.

(10) Behavior support plan--A comprehensive, individualized written plan based on a current functional behavior assessment that includes specific objectives and behavioral techniques designed to teach or increase adaptive skills and decrease or eliminate target behaviors.

(11) Behavioral support--Specialized interventions that assist an individual in increasing adaptive behaviors and replacing or modifying challenging or socially unacceptable behaviors that prevent or interfere with the individual's inclusion in the community and which consist of the following activities:

(A) conducting a functional behavior assessment;

(B) developing an individualized behavior support plan;

(C) training of and consultation with an individual, family member, or other persons involved in the individual's care regarding the implementation of the behavior support plan;

(D) monitoring and evaluation of the effectiveness of the behavior support plan;

(E) modifying, as necessary, the behavior support plan based on monitoring and evaluation of the plan's effectiveness; and

(F) counseling with and educating an individual, family members, or other persons involved in the individual's care about the techniques to use in assisting the individual to control challenging or socially unacceptable behaviors.

(12) Business day--Any day except a Saturday, a Sunday, or a national or state holiday listed in Texas Government Code §662.003(a) or (b).

(13) Case management--A service that assists an individual in the following:

(A) assessing the individual's needs;

(B) enrolling into the CLASS Program;

(C) developing the individual's IPC;

(D) coordinating the provision of CLASS Program services and CFC services;

(E) monitoring the effectiveness of the CLASS Program services and CFC services and the individual's progress toward achieving the outcomes identified for the individual;

(F) revising the individual's IPC, as appropriate;

(G) accessing non-CLASS Program services and non-CFC services;

(H) resolving a crisis that occurs regarding the individual; and

(I) advocating for the individual's needs.

(14) Catchment area--As determined by DADS, a geographic area composed of multiple Texas counties.

(15) CDS option--Consumer directed services option. A service delivery option as defined in §41.103 of this title (relating to Definitions).

(16) CDSA--FMSA.

(17) CFC--Community First Choice.

(18) CFC ERS--CFC emergency response services. Backup systems and supports used to ensure continuity of services and supports. CFC ERS includes electronic devices and an array of available technology, personal emergency response systems, and other mobile communication devices.

(19) CFC ERS provider--The entity directly providing CFC ERS to an individual, which may be the DSA or a contractor of the DSA.

(20) CFC FMS--The term used for FMS on the IPC of an individual if the individual receives only CFC PAS/HAB through the CDS option.

(21) CFC PAS/HAB--CFC personal assistance services/habilitation. A service:

(A) that consists of:

(i) personal assistance services that provide assistance to an individual in performing ADLs and IADLs based on the individual's person-centered service plan, including:

(I) non-skilled assistance with the performance of the ADLs and IADLs;

(II) household chores necessary to maintain the home in a clean, sanitary, and safe environment;

(III) escort services, which consist of accompanying and assisting an individual to access services or activities in the community, but do not include transporting an individual; and

(IV) assistance with health-related tasks; and

(ii) habilitation that provides assistance to an individual in acquiring, retaining, and improving self-help, socialization, and daily living skills and training the individual on ADLs, IADLs, and health-related tasks, such as:

(I) self-care;

(II) personal hygiene;

(III) household tasks;

(IV) mobility;

(V) money management;

(VI) community integration, including how to get around in the community;

(VII) use of adaptive equipment;

(VIII) personal decision making;

(IX) reduction of challenging behaviors to allow individuals to accomplish ADLs, IADLs, and health-related tasks; and

(X) self-administration of medication; and

(B) does not include transporting the individual, which means driving the individual from one location to another.

(22) CFC support consultation--The term used for support consultation on the IPC of an individual if the individual receives only CFC PAS/HAB through the CDS option.

(23) CFC support management--Training on how to select, manage, and dismiss an unlicensed service provider of CFC PAS/HAB as described in the *CLASS Provider Manual.*

(24) CMA--Case management agency. A program provider that has a contract with DADS to provide case management.

(25) CLASS Program--The Community Living Assistance and Support Services Program.

(26) CMS--The Centers for Medicare and Medicaid Services. CMS is the agency within the United States Department of Health and Human Services that administers Medicare and Medicaid programs.

(27) Cognitive rehabilitation therapy--A service that:

(A) assists an individual in learning or relearning cognitive skills that have been lost or altered as a result of damage to brain cells or brain chemistry in order to enable the individual to compensate for lost cognitive functions; and

(B) includes reinforcing, strengthening, or reestablishing previously learned patterns of behavior, or establishing new patterns of cognitive activity or compensatory mechanisms for impaired neurological systems.

(28) Competitive employment--Employment that pays an individual at least the minimum wage if the individual is not self-employed.

(29) Continued family services--Services provided to an individual 18 years of age or older who resides with a support family, as described in §45.531 of this chapter (relating to Support Family Requirements), that allow the individual to reside successfully in a community setting by training the individual to acquire, retain, and improve self-help, socialization, and daily living skills or assisting the individual with ADLs. The individual must be receiving support family services immediately before receiving continued family services. Continued family services consist of services described in §45.533 of this chapter (relating to Support Family Duties).

(30) Contract--A provisional contract that DADS enters into in accordance with §49.208 of this chapter (relating to Provisional Contract Application Approval) that has a stated expiration date or a standard contract that DADS enters into in accordance with §49.209 of this chapter (relating to Standard Contract) that does not have a stated expiration date.

(31) DADS--The Department of Aging and Disability Services.

(32) Denial--An action taken by DADS that:

(A) rejects an individual's request for enrollment into the CLASS Program;

(B) disallows a CLASS Program service or a CFC service requested on an IPC that was not authorized on the prior IPC; or

(C) disallows a portion of the amount or level of a CLASS Program service or a CFC service requested on an IPC that was not authorized on the prior IPC.

(33) Dental treatment--A service that:

(A) consists of the following:

(i) emergency dental treatment, which is procedures necessary to control bleeding, relieve pain, and eliminate acute infection; operative procedures that are required to prevent the imminent loss of teeth; and treatment of injuries to the teeth or supporting structures;

(ii) routine preventative dental treatment, which is examinations, x-rays, cleanings, sealants, oral prophylaxes, and topical fluoride applications;

(iii) therapeutic dental treatment, which includes fillings, scaling, extractions, crowns, pulp therapy for permanent and primary teeth; restoration of carious permanent and primary teeth; maintenance of space; and limited provision of removable prostheses when masticatory function is impaired, when an existing prosthesis is unserviceable, or when aesthetic considerations interfere with employment or social development;

(iv) orthodontic dental treatment, which is procedures that include treatment of retained deciduous teeth; cross-bite therapy; facial accidents involving severe traumatic deviations; cleft palates with gross malocclusion that will benefit from early treatment; and severe, handicapping malocclusions affecting permanent dentition with a minimum score of 26 as measured on the Handicapping Labio-lingual Deviation Index; and

(v) dental sedation, which is sedation necessary to perform dental treatment including non-routine anesthesia, (for example, intravenous sedation, general anesthesia, or sedative therapy prior to routine procedures) but not including administration of routine local anesthesia only; and

(B) does not include cosmetic orthodontia.

(34) Dietary services--The provision of nutrition services, as defined in Texas Occupations Code, Chapter 701.

(35) Direct services--The following services:

(A) CLASS Program services other than case management, FMS, support consultation, support family services, continued family services, or transition assistance services; and

(B) CFC PAS/HAB, CFC ERS, and CFC support management.

(36) DSA--Direct services agency. A program provider that has a contract with DADS to provide direct services.

(37) DFPS--The Department of Family and Protective Services.

(38) Employment assistance--Assistance provided to an individual to help the individual locate competitive employment in the community.

(39) Enrollment IPC--The first IPC developed for an individual upon enrollment into the CLASS Program.

(40) FMS--Financial management services. A service, as defined in §41.103 of this title, that is provided to an individual participating in the CDS option.

(41) FMSA--Financial management services agency. An entity, as defined in §41.103 of this title, that provides FMS.

(42) Former military member--A person who served in the United States Army, Navy, Air Force, Marine Corps, or Coast Guard:

(A) who declared and maintained Texas as the person's state of legal residence in the manner provided by the applicable military branch while on active duty; and

(B) who was killed in action or died while in service, or whose active duty otherwise ended.

(43) Functional behavior assessment--An evaluation that is used to determine the underlying function or purpose of an individual's behavior, so an effective behavior support plan can be developed.

(44) Good cause--As determined by DADS, a reason outside the control of the CFC ERS provider.

(45) Habilitation--A service that allows an individual to reside successfully in a community setting by training the individual to acquire, retain, and improve self-help, socialization, and daily living skills or assisting the individual with ADLs. Habilitation services consist of the following:

(A) habilitation training, which is interacting face-to-face with an individual who is awake to train the individual in the following activities:

(i) self-care;

(ii) personal hygiene;

(iii) household tasks;

(iv) mobility;

(v) money management;

(vi) community integration;

(vii) use of adaptive equipment;

(viii) management of caregivers;

(ix) personal decision making;

(x) interpersonal communication;

(xi) reduction of challenging behaviors;

(xii) socialization and the development of relationships;

(xiii) participating in leisure and recreational activities;

(xiv) use of natural supports and typical community services available to the public;

(xv) self-administration of medication; and

(xvi) strategies to restore or compensate for reduced cognitive skills;

(B) habilitation ADLs, which are:

(i) interacting face-to-face with an individual who is awake to assist the individual in the following activities:

(I) self-care;

(II) personal hygiene;

(III) ambulation and mobility;

(IV) money management;

(V) community integration;

(VI) use of adaptive equipment;

(VII) self-administration of medication;

(VIII) reinforce any therapeutic goal of the individual;

(IX) provide transportation to the individual; and

(X) protect the individual's health, safety and security;

(ii) interacting face-to-face or by telephone with an individual or an involved person regarding an incident that directly affects the individual's health or safety; and

(iii) performing one of the following activities that does not involve interacting face-to-face with an individual:

(I) shopping for the individual;

(II) planning or preparing meals for the individual;

(III) housekeeping for the individual;

(IV) procuring or preparing the individual's medication; or

(V) arranging transportation for the individual; and

(C) habilitation delegated, which is tasks delegated by a registered nurse to a service provider of habilitation in accordance with 22 TAC Chapter 224 (relating to Delegation of Nursing Tasks By Registered Professional Nurses to Unlicensed Personnel For Clients With Acute Conditions Or In Acute Care Environments) or Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegations In Independent Living Environments For Clients With Stable and Predictable Conditions).

(46) Health-related tasks--Specific tasks related to the needs of an individual, which can be delegated or assigned by licensed health care professionals under state law to be performed by a service provider of CFC PAS/HAB. These include tasks delegated by an RN, health maintenance activities, as defined in 22 TAC §225.4 (relating to Definitions), that may not require delegation, and activities assigned to a service provider of CFC PAS/HAB by a licensed physical therapist, occupational therapist, or speech-language pathologist.

(47) HHSC--Health and Human Services Commission.

(48) Hippotherapy--The provision of therapy that:

(A) involves an individual interacting with and riding on horses;

(B) is designed to improve the balance, coordination, focus, independence, confidence, and motor and social skills of the individual; and

(C) is provided by two service providers at the same time, as described in §45.803(d)(11) of this chapter (relating to Qualifications of DSA Staff Persons).

(49) IADLs--Instrumental activities of daily living. Activities related to living independently in the community, including meal planning and preparation; managing finances; shopping for food, clothing, and other essential items; performing essential household chores; communicating by phone or other media; and traveling around and participating in the community.

(50) ICF/IID--Intermediate care facility for individuals with an intellectual disability or related conditions. An ICF/IID is a facility in which ICF/IID Program services are provided and that is:

(A) licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 252; or

(B) certified by DADS, including a state supported living center.

(51) ICF/IID Program--The Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions Program, which provides Medicaid-funded residential services to individuals with an intellectual disability or related conditions.

(52) ICF/MR--ICF/IID.

(53) ID/RC Assessment--Intellectual Disability/Related Conditions Assessment. A form used by DADS to determine the level of care for an individual.

(54) Individual--A person seeking to enroll or who is enrolled in the CLASS Program.

(55) Institutional services--Medicaid-funded services provided in a nursing facility licensed in accordance with Texas Health and Safety Code, Chapter 242, or in an ICF/IID.

(56) Intellectual disability--Consistent with Texas Health and Safety Code, §591.003, significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and originating during the developmental period (0-18 years of age).

(57) IPC--Individual plan of care. A written plan developed by an individual's service planning team using person-centered planning and documented on a DADS form that:

(A) meets:

(i) the requirement described in §45.201(a)(5) of this chapter (relating to Eligibility Criteria for CLASS Program Services and CFC Services); and

(ii) the requirements described in §45.214(a)(1)(B) and (b) of this chapter (relating to Development of Enrollment IPC); and

(B) is authorized by DADS in accordance with Subchapter B of this chapter (relating to Eligibility, Enrollment, and Review).

(58) IPC cost--The estimated annual cost of CLASS Program services on an IPC.

(59) IPC period--The effective period of an enrollment IPC and a renewal IPC as follows:

(A) for an enrollment IPC, the period of time from the effective date of an enrollment IPC, as described in §45.214(h) of this chapter, until the first calendar day of the same month of the effective date in the following year; and

(B) for a renewal IPC, a 12-month period of time starting on the effective date of a renewal IPC as described in §45.222(b) of this chapter (relating to Renewal IPC and Requirement for Authorization to Continue Services).

(60) IPP--Individual program plan. A written plan documented on a DADS form that describes the goals and objectives to be met by the provision of each CLASS Program service and CFC service, other than CFC support management, on an individual's IPC that:

(A) are supported by justifications;

(B) are measurable; and

(C) have timelines.

(61) LAR--Legally authorized representative. A person authorized by law to act on behalf of an individual with regard to a matter described in this chapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(62) Licensed vocational nurse--A person licensed to provide vocational nursing in accordance with Texas Occupations Code, Chapter 301.

(63) Licensed vocational nursing--The provision of vocational nursing, as defined in Texas Occupations Code, Chapter 301.

(64) Managed care organization--This term has the meaning set forth in Texas Government Code, §536.001.

(65) MAO Medicaid--Medical Assistance Only Medicaid. A type of Medicaid by which an individual qualifies financially for Medicaid assistance but does not receive Supplemental Security Income (SSI) benefits.

(66) Massage therapy--The provision of massage therapy as defined in Texas Occupations Code, Chapter 455.

(67) Medicaid--A program administered by CMS and funded jointly by the states and the federal government that pays for health care to eligible groups of low-income people.

(68) Medicaid waiver program--A service delivery model authorized under §1915(c) of the Social Security Act in which certain Medicaid statutory provisions are waived by CMS.

(69) Military family member--A person who is the spouse or child (regardless of age) of:

(A) a military member; or

(B) a former military member.

(70) Military member--A member of the United States military serving in the Army, Navy, Air Force, Marine Corps, or Coast Guard on active duty who has declared and maintains Texas as the member's state of legal residence in the manner provided by the applicable military branch.

(71) Minor home modification--A physical adaptation to an individual's residence that is necessary to address the individual's specific needs and that enables the individual to function with greater independence in the individual's residence or to control his or her environment and:

(A) is included on the list of minor home modifications in the *CLASS Provider Manual;* or

(B) except as provided by §45.618(c) of this chapter (relating to Repair or Replacement of Minor Home Modification), is the repair and maintenance of a minor home modification purchased through the CLASS Program that is needed after one year has elapsed from the date the minor home modification is complete and that is not covered by a warranty.

(72) Music therapy--The use of musical or rhythmic interventions to restore, maintain, or improve an individual's social or emotional functioning, mental processing, or physical health.

(73) Natural supports--Unpaid persons, including family members, volunteers, neighbors, and friends, who assist and sustain an individual.

(74) Nursing facility--A facility that is licensed in accordance with Texas Health and Safety Code, Chapter 242.

(75) Occupational therapy--The provision of occupational therapy, as described in Texas Occupations Code, Chapter 454.

(76) Own home or family home--A residence that is not:

(A) an ICF/IID;

(B) a nursing facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 242;

(C) an assisted living facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 247;

(D) a residential child-care operation licensed or subject to being licensed by DFPS unless it is a foster family home or a foster group home;

(E) a facility licensed or subject to being licensed by the Department of State Health Services;

(F) a facility operated by the Department of Assistive and Rehabilitative Services;

(G) a residential facility operated by the Texas Youth Commission, a jail, or prison; or

(H) a setting in which two or more dwellings, including units in a duplex or apartment complex, single family homes, or facilities listed in subparagraphs (A) - (G) of this paragraph, but excluding supportive housing under Section 811 of the National Affordable Housing Act of 1990, meet all of the following criteria:

(i) the dwellings create a residential area distinguishable from other areas primarily occupied by persons who do not require routine support services because of a disability;

(ii) most of the residents of the dwellings are individuals with an intellectual disability, a related condition, or a physical disability; and

(iii) the residents of the dwellings are provided routine support services through personnel, equipment, or service facilities shared with the residents of the other dwellings.

(77) PAS/HAB plan--Personal Assistance Services (PAS)/Habilitation (HAB) Plan. A written plan developed by an individual's service planning team and documented on a DADS form that describes the type and frequency of CFC PAS/HAB activities to be performed by a service provider.

(78) Person-centered planning--A process that empowers the individual (and the LAR on the individual's behalf) to direct the development of an IPC that meets the individual's outcomes. The process:

(A) identifies existing supports and services necessary to achieve the individual's outcomes;

(B) identifies natural supports available to the individual and negotiates needed services and supports;

(C) occurs with the support of a group of people chosen by the individual (and the LAR on the individual's behalf); and

(D) accommodates the individual's style of interaction and preferences regarding time and setting.

(79) Physical therapy--The provision of physical therapy, as defined in Texas Occupations Code, Chapter 453.

(80) Physician--Based on the definition in §97.2 of this title (relating to Definitions), a person who:

(A) is licensed in Texas to practice medicine or osteopathy in accordance with Texas Occupations Code, Chapter 155;

(B) is licensed in Arkansas, Louisiana, New Mexico, or Oklahoma to practice medicine, who is the treating physician of an individual, and orders home health for the individual in accordance with the Texas Occupations Code, §151.056(b)(4); or

(C) is a commissioned or contract physician or surgeon who serves in the United States uniformed services or Public Health Service if the person is not engaged in private practice, in accordance with the Texas Occupations Code, §151.052(a)(8).

(81) Prevocational services--Services that are not job-task oriented and are provided to an individual who the service planning team does not expect to be employed (without receiving supported employment) within one year after prevocational services are to begin, to prepare the individual for employment. Prevocational services consist of:

(A) assessment of vocational skills an individual needs to develop or improve upon;

(B) individual and group instruction regarding barriers to employment;

(C) training in skills:

(i) that are not job-task oriented;

(ii) that are related to goals identified in the individual's PAS/HAB plan;

(iii) that are essential to obtaining and retaining employment, such as the effective use of community resources, transportation, and mobility training; and

(iv) for which an individual is not compensated more than 50 percent of the federal minimum wage or industry standard, whichever is greater;

(D) training in the use of adaptive equipment necessary to obtain and retain employment; and

(E) transportation between the individual's place of residence and prevocational services work site when other forms of transportation are unavailable or inaccessible.

(82) Program provider--A DSA or a CMA.

(83) Public emergency personnel--Personnel of a sheriff's department, police department, emergency medical service, or fire department.

(84) Recreational therapy--Recreational or leisure activities that assist an individual to restore, remediate or habilitate the individual's level of functioning and independence in life activities, promote health and wellness, and reduce or eliminate the activity limitations caused by an illness or disabling condition.

(85) Reduction--An action taken by DADS as a result of a review of a revised IPC or renewal IPC that decreases the amount or level of a service authorized by DADS on the prior IPC.

(86) Registered nurse--A person licensed to provide professional nursing in accordance with Texas Occupations Code, Chapter 301.

(87) Registered nursing--The provision of professional nursing, as defined in Texas Occupations Code, Chapter 301.

(88) Related condition--As defined in the Code of Federal Regulations (CFR), Title 42, §435.1010, a severe and chronic disability that:

(A) is attributed to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, other than mental illness, found to be closely related to an intellectual disability because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of individuals with an intellectual disability, and requires treatment or services similar to those required for individuals with an intellectual disability;

(B) is manifested before the individual reaches 22 years of age;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in at least three of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

(89) Relative--A person related to another person within the fourth degree of consanguinity or within the second degree of affinity. A more detailed explanation of this term is included in the *CLASS Provider Manual.*

(90) Renewal IPC--An IPC developed for an individual in accordance with §45.223 of this chapter (relating to Renewal and Revision of an IPC) because the IPC will expire within 90 calendar days.

(91) Respite--The temporary assistance with an individual's ADLs if the individual has the same residence as a person who routinely provides such assistance and support to the individual, and the person is temporarily unavailable to provide such assistance and support.

(A) If the person who routinely provides assistance and support, resides with the individual, and is temporarily unavailable to provide assistance and support, is a service provider of habilitation or CFC PAS/HAB or an employee in the CDS option of habilitation or CFC PAS/HAB, DADS does not authorize respite unless:

(i) the service provider or employee routinely provides unpaid assistance and support with ADLs to the individual;

(ii) the amount of respite does not exceed the amount of unpaid assistance and support routinely provided; and

(iii) the service provider of respite or employee in the CDS option of respite does not have the same residence as the individual.

(B) If the person who routinely provides assistance and support, resides with the individual, and is temporarily unavailable to provide assistance and support, is a service provider of support family services or continued family services, DADS does not authorize respite unless:

(i) for an individual receiving support family services, the individual does not receive respite on the same day the individual receives support family services;

(ii) for an individual receiving continued family services, the individual does not receive respite on the same day the individual receives continued family services; and

(iii) the service provider of respite or employee in the CDS option of respite does not have the same residence as the individual.

(C) Respite services consist of the following:

(i) interacting face-to-face with an individual who is awake to assist the individual in the following activities:

(I) self-care;

(II) personal hygiene;

(III) ambulation and mobility;

(IV) money management;

(V) community integration;

(VI) use of adaptive equipment;

(VII) self-administration of medication;

(VIII) reinforce any therapeutic goal of the individual;

(IX) provide transportation to the individual; and

(X) protect the individual's health, safety, and security;

(ii) interacting face-to-face or by telephone with an individual or an involved person regarding an incident that directly affects the individual's health or safety; and

(iii) performing one of the following activities that do not involve interacting face-to-face with an individual:

(I) shopping for the individual;

(II) planning or preparing meals for the individual;

(III) housekeeping for the individual;

(IV) procuring or preparing the individual's medication;

(V) arranging transportation for the individual; or

(VI) protecting the individual's health, safety, and security while the individual is asleep.

(92) Responder--A person designated to respond to an alarm call activated by an individual.

(93) Revised IPC--An enrollment IPC or a renewal IPC that is revised during an IPC period in accordance with §45.223 of this chapter to add a new CLASS Program service or CFC service or change the amount of an existing service.

(94) Seclusion--The involuntary separation of an individual away from other individuals and the placement of the individual alone in an area from which the individual is prevented from leaving.

(95) Service planning team--A planning team convened and facilitated by a CLASS Program case manager consisting of the following persons:

(A) the individual;

(B) if applicable, the individual's LAR;

(C) the case manager;

(D) a representative of the DSA;

(E) other persons whose inclusion is requested by the individual or LAR and who agree to participate; and

(F) a person selected by the DSA, with the approval of the individual or LAR, who is:

(i) professionally qualified by certification or licensure and has special training and experience in the diagnosis and habilitation of persons with the individual's related condition; or

(ii) directly involved in the delivery of services and supports to the individual.

(96) Service provider--A person who is an employee or contractor of a DSA who provides a direct service.

(97) Specialized licensed vocational nursing--The provision of licensed vocational nursing to an individual who has a tracheostomy or is dependent on a ventilator.

(98) Specialized registered nursing--The provision of registered nursing to an individual who has a tracheostomy or is dependent on a ventilator.

(99) Speech and language pathology--The provision of speech-language pathology, as defined in Texas Occupations Code, Chapter 401.

(100) Specialized therapies--Services to promote skills development, maintain skills, decrease inappropriate behaviors, facilitate emotional well-being, create opportunities for socialization, or improve physical and medical status that consist of the following:

(A) aquatic therapy;

(B) hippotherapy;

(C) massage therapy;

(D) music therapy;

(E) recreational therapy; and

(F) therapeutic horseback riding.

(101) Staff person--A full-time or part-time employee of the program provider.

(102) State supported living center--A state-supported and structured residential facility operated by DADS to provide to persons with an intellectual disability a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills, but does not include a community-based facility owned by DADS.

(103) Support consultation--A service, as defined in §41.103 of this title, that may be provided to an individual who chooses to participate in the CDS option.

(104) Supported employment--Assistance provided to sustain competitive employment to an individual who, because of a disability, requires intensive, ongoing support to be self-employed, work from home, or perform in a work setting at which individuals without disabilities are employed.

(105) Support family services--Services provided to an individual under 18 years of age who resides with a support family, as described in §45.531 of this chapter, that allow the individual to reside successfully in a community setting by supporting the individual to acquire, maintain, and improve self-help, socialization, and daily living skills or assisting the individual with ADLs. Support family services consist of the services described in §45.533 of this chapter.

(106) System check--A test of the CFC ERS equipment to determine if:

(A) the individual can successfully activate an alarm call; and

(B) the equipment is working properly.

(107) Target behavior--A behavior identified in a behavior support plan for reduction or elimination.

(108) Therapeutic horseback riding--The provision of therapy that:

(A) involves an individual interacting with and riding on horses; and

(B) is designed to improve the balance, coordination, focus, independence, confidence, and motor and social skills of the individual.

(109) Temporary admission--Being admitted for 180 consecutive calendar days or less.

(110) Transition assistance services--In accordance with Chapter 62 of this title (relating to Transition Assistance Services), services provided to an individual who is receiving institutional services and is eligible for and enrolling into the CLASS Program.

(111) Transportation plan--A written plan, based on person-centered planning and developed with an individual using DADS Individual Transportation Plan form found at www.dads.state.tx.us. A transportation plan is used to document how transportation will be delivered to support an individual's desired goals and objectives for transportation as identified in the IPP.

§45.104. Description of the CLASS Program and CFC Option.

(a) The CLASS Program is a Medicaid waiver program approved by CMS under §1915(c) of the Social Security Act. It provides community-based services and supports to an eligible individual as an alternative to the ICF/IID Program. CLASS Program services are intended to, as a whole, enhance the individual's integration into the community, maintain or improve the individual's independent functioning, and prevent the individual's admission to an institution.

(b) DADS operates the CLASS Program under the authority of HHSC.

(c) DADS limits the enrollment in the CLASS Program to the number of individuals approved by CMS or by available funding from the state.

(d) The CLASS program offers the following services:

(1) adaptive aids;

(2) auditory integration training/auditory enhancement training;

(3) behavioral support;

(4) case management;

(5) cognitive rehabilitation therapy;

(6) dental treatment;

(7) habilitation;

(8) licensed vocational nursing;

(9) minor home modifications;

(10) dietary services;

(11) occupational therapy;

(12) physical therapy;

(13) prevocational services;

(14) registered nursing;

(15) respite, which consists of:

(A) in-home respite; and

(B) out-of-home respite;

(16) speech and language pathology;

(17) specialized licensed vocational nursing;

(18) specialized registered nursing;

(19) specialized therapies, which consist of:

(A) aquatic therapy;

(B) hippotherapy;

(C) massage therapy;

(D) music therapy;

(E) recreational therapy; and

(F) therapeutic horseback riding;

(20) support family services;

(21) continued family services;

(22) employment assistance;

(23) supported employment;

(24) transition assistance services; and

(25) if the individual's IPC includes at least one CLASS Program service to be delivered through the CDS option:

(A) FMS; and

(B) support consultation.

(e) A DSA may only provide and bill for habilitation if the activity provided is transportation as described in §45.103(45)(B)(i)(IX) of this subchapter (relating to Definitions).

(f) CFC is a state plan option governed by Code of Federal Regulations, Title 42, Chapter 441, Subchapter K, regarding Home and Community-Based Attendant Services and Supports State Plan Option (Community First Choice) that provides the following services to individuals:

(1) CFC PAS/HAB;

(2) CFC ERS; and

(3) CFC support management for an individual receiving CFC PAS/HAB.

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

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SUBCHAPTER B. ELIGIBILITY, ENROLLMENT, AND REVIEW

DIVISION 1. ELIGIBILITY AND MAINTENANCE OF INTEREST LIST

40 TAC §45.201

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

§45.201. Eligibility Criteria for CLASS Program Services and CFC Services.

(a) An individual is eligible for CLASS Program services if:

(1) the individual meets the financial eligibility criteria described in Appendix B of the CLASS Program waiver application approved by CMS and found at www.dads.state.tx.us;

(2) the individual is determined by DADS to meet the diagnostic eligibility criteria for the CLASS Program as described in §9.239 of this title (relating to ICF/MR Level of Care VIII Criteria);

(3) the individual has been diagnosed with a related condition that manifested before the individual was 22 years of age;

(4) the individual demonstrates a need for CFC PAS/HAB;

(5) the individual has an IPC cost for CLASS Program services at or below $114,736.07;

(6) the individual is not enrolled in another waiver program or receiving a service that may not be received if the individual is enrolled in the CLASS Program, as identified in the Mutually Exclusive Services table in Appendix III of the *CLASS Provider Manual* available at www.dads.state.tx.us;

(7) the individual resides in the individual's own home or family home; and

(8) the individual requires the provision of:

(A) at least one CLASS Program service per month or monthly monitoring; and

(B) at least one CLASS Program service during an IPC period.

(b) An individual is not considered to reside in the individual's own home or family home if the individual is admitted to one of the facilities listed in §45.103(76)(A) - (G) of this chapter (relating to Definitions) for more than 180 consecutive calendar days.

(c) Except as provided in subsection (d) of this section, an individual is eligible for a CFC service under this chapter if the individual:

(1) meets the criteria described in subsections (a) and (b) of this section;

(2) requires the provision of the CFC service; and

(3) is not receiving support family services or continued family services.

(d) To be eligible for a CFC service under this chapter, an An individual receiving MAO Medicaid must, in addition to meeting the eligibility criteria described in subsection (c) of this section, receive a CLASS Program service at least monthly, as required by 42 CFR §441.510(d).

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DIVISION 2. ENROLLMENT PROCESS

40 TAC §§45.212 - 45.217

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

§45.214. Development of Enrollment IPC.

(a) A CMA must, within 30 calendar days after notification by the DSA of DADS approval of diagnostic eligibility for an individual as required by §45.212(k) of this division (relating to Process for Enrollment of an Individual), ensure that an individual's case manager:

(1) convenes a service planning team meeting in which the service planning team develops:

(A) a PAS/HAB plan based on information obtained from assessments conducted and observations made by the DSA as required by §45.212(h) of this division;

(B) a proposed enrollment IPC that:

(i) identifies the type of each CLASS Program service and CFC service, other than CFC support management, to be provided to an individual;

(ii) specifies the number of units of each CLASS Program service and CFC service, other than CFC support management, to be provided to the individual;

(iii) for each CLASS Program service:

(I) is within the service limit described in §45.218 of this division (relating to Service Limits);

(II) if an adaptive aid, meets the requirements in Subchapter F, Division 1, of this chapter (relating to Adaptive Aids, Minor Home Modifications, and CFC ERS); and

(III) if a minor home modification, meets the requirements in Subchapter F, Division 2, of this chapter;

(iv) for CFC ERS, meets the requirements in Subchapter F, Division 3, of this chapter;

(v) states if an individual will receive CFC support management;

(vi) describes any other service or support to be provided to the individual through sources other than CLASS Program services or CFC services; and

(vii) if it includes registered nursing, licensed vocational nursing, specialized registered nursing, specialized licensed vocational nursing, habilitation, or CFC PAS/HAB, identifies whether the service is critical to the individual's health and safety, as required by §45.231(a)(2) of this subchapter (relating to Service Backup Plans);

(C) an IPP for each CLASS Program service and CFC service listed on the proposed enrollment IPC, other than CFC support management; and

(D) a transportation plan, if transportation as a habilitation activity or as an adaptive aid is included on the IPC; and

(2) if the individual may need cognitive rehabilitation therapy, begin assisting the individual in obtaining an assessment as required by §45.705(h) of this chapter (relating to CMA Service Delivery).

(b) The case manager must ensure that each CLASS Program service and CFC service on the proposed enrollment IPC, other than CFC support management:

(1) is necessary to protect the individual's health and welfare in the community;

(2) addresses the individual's related condition;

(3) is not available to the individual through sources other than CLASS Program services or CFC services, including the Medicaid State Plan, other governmental programs, private insurance, or the individual's natural supports;

(4) is the most appropriate type and amount of CLASS Program service and CFC service to meet the individual's needs; and

(5) is cost effective.

(c) If the individual or LAR, case manager, and DSA agree on the type and amount of services to be included in a proposed enrollment IPC, the case manager must:

(1) ensure that during the service planning team meeting required by subsection (a) of this section the proposed enrollment IPC is reviewed, signed as evidence of agreement, and dated by:

(A) the individual or LAR;

(B) the case manager; and

(C) the DSA; and

(2) no later than 30 calendar days before the effective date of the proposed enrollment IPC as determined by the service planning team:

(A) submit the following to DADS for its review:

(i) the proposed enrollment IPC;

(ii) the IPPs;

(iii) the PAS/HAB plan;

(iv) the completed DADS CLASS/DBMD Nursing Assessment form provided by the DSA in accordance with §45.212(i)(3) of this division; and

(v) if transportation as a habilitation activity or as an adaptive aid is included on the IPC, the transportation plan; and

(B) if the individual will receive a service through the CDS option, send to the FMSA a copy of the proposed enrollment IPC, the IPP for each service the individual will receive through the CDS option, the PAS/HAB plan and, if required by subsection (a)(1)(D) of this section, the transportation plan.

(d) If the individual or LAR requests a CLASS Program service or CFC service that the case manager or DSA has determined does not meet the criteria described in subsection (b) of this section, does not meet the requirements described in Subchapter F of this chapter, or exceeds a service limit described in §45.218 of this division, the CMA must comply with this subsection.

(1) The CMA must, in accordance with *CLASS Provider Manual,* send the individual or LAR written notice of the denial of the requested CLASS Program service or CFC service, copying the DSA and FMSA, if the individual or LAR requests a CLASS Program service or CFC service that the CMA or DSA has determined:

(A) does not meet the criteria described in subsection (b) of this section;

(B) does not meet the requirements described in Subchapter F of this chapter; or

(C) exceeds a service limit described in §45.218 of this division.

(2) If the CMA is required to send written notice of denial of a CLASS Program service or CFC service as described in paragraph (1) of this subsection, the CMA must also:

(A) no later than 30 calendar days before the effective date of the proposed IPC as determined by the service planning team, submit to DADS for its review:

(i) the proposed enrollment IPC that includes the type and amount of CLASS Program services or CFC services in dispute and not in dispute and is signed and dated by:

(I) the individual or LAR;

(II) the case manager; and

(III) the DSA;

(ii) the IPPs;

(iii) the PAS/HAB plan; and

(iv) if transportation as a habilitation activity or as an adaptive aid is included on the IPC, the transportation plan; and

(B) if the individual will receive a service through the CDS option, send to the FMSA a copy of the proposed enrollment IPC, the IPP for each service the individual will receive through the CDS option, the PAS/HAB plan, and if required by subsection (a)(1)(D) of this section, the transportation plan.

(e) DADS reviews a proposed enrollment IPC in accordance with §45.216 of this division (relating to DADS Review of an Enrollment IPC). At DADS request, the CMA must submit additional documentation supporting the proposed enrollment IPC to DADS within 10 calendar days after the date of DADS request.

(f) If DADS notifies the individual's CMA, in writing, that the IPC is authorized and the individual's request for enrollment is approved, as described in §45.216(c) of this division, the CMA must send a copy of the authorized IPC to the DSA and, if the individual receives a service though the CDS option, to the FMSA.

(g) The process by which an individual's request for enrollment or a CLASS Program service or CFC service is denied, based on DADS review of a proposed enrollment IPC, is described in §45.216(d) - (f) of this division.

(h) The effective date of an enrollment IPC is one of the following, whichever is later:

(1) the effective date as determined by the service planning team; or

(2) the date DADS notifies the CMA that the individual's request for enrollment is approved and the IPC is authorized in accordance with §45.216(c) or (e)(2)(C) of this division.

(i) An enrollment IPC is effective for an IPC period.

(j) An individual's enrollment IPC must be reviewed and updated in accordance with §45.223 of this subchapter (relating to Renewal and Revision of an IPC).

§45.215. Development of IPPs.

(a) The case manager must:

(1) develop an IPP for each CLASS Program service and CFC service listed on a proposed enrollment IPC, other than CFC support management, and submit the IPPs to DADS in accordance with §45.214 of this division (relating to Development of an Enrollment IPC); and

(2) develop a new or revised IPP for each CLASS Program service and CFC service, other than CFC support management, and submit the IPPs to DADS in accordance with §45.223 of this subchapter (relating to Renewal and Revision of an IPC).

(b) The case manager must ensure that the each IPP is reviewed, signed, and dated as evidence of agreement by:

(1) the individual or LAR;

(2) the case manager; and

(3) the DSA.

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DIVISION 3. REVIEWS

40 TAC §§45.221, 45.223 - 45.225

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

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DIVISION 4. SERVICE BACKUP PLANS

40 TAC §45.231

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas

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SUBCHAPTER C. RIGHTS AND RESPONSIBILITIES OF AN INDIVIDUAL

40 TAC §45.301, §45.302

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

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SUBCHAPTER D. TRANSFER, DENIAL, SUSPENSION, REDUCTION, AND TERMINATION OF SERVICES

40 TAC §§45.402 - 45.409

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

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SUBCHAPTER E. SUPPORT FAMILY SERVICES
DIVISION 1. INTRODUCTION

40 TAC §45.505

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make

recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

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SUBCHAPTER F. ADAPTIVE AIDS AND MINOR HOME MODIFICATIONS
DIVISION 3. CFC ERS

40 TAC §45.621

The new rule is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

§45.621. CFC ERS.

(a) A DSA must ensure that CFC ERS is provided only to an individual:

(1) who is not receiving support family services or continued family services; and

(2) who:

(A) lives alone, who is alone for significant parts of the day, or has no regular caregiver for extended periods of time; and

(B) would otherwise require extensive routine supervision.

(b) Installing equipment.

(1) A DSA must ensure that CFC ERS equipment is installed within 14 business days after one of the following dates, whichever is later:

(A) the date DADS authorizes the proposed IPC that includes CFC ERS; or

(B) the effective date of the individual's IPC as determined by the service planning team.

(2) At the time CFC ERS equipment is installed, a DSA must ensure that:

(A) the equipment is installed in accordance with the manufacturer's installation instructions;

(B) an initial test of the equipment is made;

(C) the equipment has an alternate power source in the event of a power failure;

(D) the individual is trained on the use of the equipment, including:

(i) demonstrating how the equipment works; and

(ii) having the individual activate an alarm call;

(E) an explanation is given to the individual that the individual must:

(i) participate in a system check each month; and

(ii) contact the CFC ERS provider if:

(I) the individual's telephone number or address changes; or

(II) one or more of the individual's responders change; and

(F) the individual is informed that a responder, in response to an alarm call, may forcibly enter the individual's home if necessary.

(3) A DSA must ensure that the date and time of the CFC ERS equipment installation and compliance with the requirements in paragraphs (1) and (2) of this subsection are documented in the individual's record.

(c) Securing responders. A DSA must ensure that, on or before the date CFC ERS equipment is installed:

(1) an attempt is made to obtain from an individual, the names and telephone numbers of at least two responders, such as a relative or neighbor;

(2) public emergency personnel:

(A) is designated as a second responder if the individual provides the name of only one responder; or

(B) is designated as the sole responder if the individual does not provide the names of any responders; and

(3) the name and telephone number of each responder is documented in the individual's record.

(d) Conducting a system check.

(1) At least once during each calendar month a DSA must ensure that a system check is conducted on a date and time agreed to by the individual.

(2) A DSA must ensure that the date, time, and result of the system check is documented in the individual's record.

(3) If, as a result of the system check:

(A) the equipment is working properly but the individual is unable to successfully activate an alarm call, the DSA must ensure that a request is made of the case manager to convene a service planning team meeting to determine if CFC ERS meets the individual's needs; or

(B) the equipment is not working properly, the DSA must ensure that, within three calendar days of the system check, the equipment is repaired or replaced.

(e) Failing to complete a system check. If a system check is not conducted in accordance with subsection (d)(1) of this section, the DSA must ensure that:

(1) the failure to comply is because of good cause; and

(2) the good cause is documented in the individual's record.

(f) Alarm call.

(1) A DSA must ensure that an alarm call is responded to 24 hours a day, seven days a week.

(2) A DSA must ensure that, if an alarm call is made, the CFC ERS provider:

(A) within 60 seconds of the alarm call, attempts to contact the individual to determine if an emergency exists;

(B) immediately contacts a responder, if as a result of attempting to contact the individual:

(i) the CFC ERS provider confirms there is an emergency; or

(ii) the CFC ERS provider is unable to communicate with the individual; and

(C) documents the following information in the individual's record when the information becomes available:

(i) the name of the individual;

(ii) the date and time of the alarm call, recorded in hours, minutes, and seconds;

(iii) the response time, recorded in seconds;

(iv) the time the individual is called in response to the alarm call, recorded in hours, minutes, and seconds;

(v) the name of the contacted responder, if applicable;

(vi) a brief description of the reason for the alarm call; and

(vii) if the reason for the alarm call is an emergency, a statement of how the emergency was resolved.

(3) If an alarm call results in a responder being dispatched to the individual's home for an emergency, the DSA must ensure that:

(A) the case manager receives written notice of the alarm call within one business day after the alarm call;

(B) if the CFC ERS provider is a contracted provider, the DSA receives written notice from the contracted provider within one business day after the alarm call; and

(C) the written notices required by subparagraphs (A) and (B) of this paragraph are maintained in the individual's record.

(g) Equipment failure.

(1) A DSA must ensure that, if an equipment failure occurs, other than during a system check required by subsection (d)(1) of this section:

(A) the individual is informed of the equipment failure; and

(B) the equipment is replaced within one business day after the failure becomes known by the CFC ERS provider.

(2) If an individual is not informed of the equipment failure and the equipment is not replaced in compliance with paragraph (1) of this subsection, the DSA must ensure that:

(A) the failure to comply is because of good cause; and

(B) as soon as possible, the individual is informed of the equipment failure and the equipment is replaced.

(h) Low battery.

(1) A DSA must ensure that, if the ERS equipment registers five or more "low battery" signals in a 72-hour period:

(A) a visit to an individual's home is made to conduct a system check within five business days after the low battery signals occur; and

(B) if the battery is defective, the battery is replaced during the visit.

(2) A DSA must ensure that, if a system check or battery replacement is not made in accordance with paragraph (1) of this subsection:

(A) the failure to comply is because of good cause; and

(B) as soon as possible, a system check and battery replacement is made.

(i) Documenting equipment failure or low battery. A DSA must ensure that the following information is documented in an individual's record:

(1) the date the equipment failure or low battery signal became known by the CFC ERS provider;

(2) the equipment or subscriber number;

(3) a description of the problem;

(4) the date the equipment or battery was repaired or replaced; and

(5) the good cause for failure to comply as described in subsections (g)(2)(A) and (h)(2)(A) of this section.

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SUBCHAPTER G. ADDITIONAL CMA REQUIREMENTS

40 TAC §§45.702, 45.704, 45.705

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

§45.702. Protection of Individual, Initial and Annual Explanations, and Offering Access to Other Services.

(a) A CMA must have and implement written policies and procedures that safeguard an individual against:

(1) infectious and communicable diseases;

(2) conflicts of interest with CMA staff persons;

(3) acts of financial impropriety by a case manager; and

(4) deliberate damage of personal possessions.

(b) A case manager must, at least annually, provide an oral and written explanation of the topics described in §45.212(a)(2)(A) - (J) of this chapter (relating to Process for Enrollment of an Individual) to the individual and LAR or person actively involved with the individual.

(c) After an individual is enrolled in the CLASS Program, a CMA must:

(1) do the following regarding transfers:

(A) at least annually, provide an oral explanation to the individual and LAR or person actively involved with the individual that the individual may transfer to a different CMA or DSA; and

(B) if the individual or LAR expresses a desire for the individual to transfer to a different CMA or DSA:

(i) give the individual and LAR or person actively involved with the individual a written list of CMAs and DSAs serving the catchment area in which the individual resides;

(ii) have the individual or LAR select a CMA and DSA by completing a Selection Determination form as described in the *CLASS Provider Manual;* and

(iii) coordinate the individual's transfer in accordance with §45.401 of this chapter (relating to Coordination of Transfers), if the individual or LAR selects a different DSA or CMA on the Selection Determination form; and

(2) at least annually:

(A) give the individual or LAR or person actively involved with the individual a written list of CMAs and DSAs serving the catchment area in which the individual resides; and

(B) have the individual or LAR select a CMA and DSA by completing a Selection Determination form as described in the *CLASS Provider Manual;* and

(3) at least annually, provide an oral explanation to the individual or LAR that they may request:

(A) that the DSA provide habilitation, out-of-home respite in a camp described in §45.806(b)(2)(D) of this chapter (relating to Respite and Dental Treatment), adaptive aids, nursing, or CFC PAS/HAB while the individual is temporarily staying at a location outside the catchment area in which the individual resides but within the state of Texas during a period of no more than 60 consecutive days; and

(B) that the DSA provide habilitation, out-of-home respite in a camp, adaptive aids, nursing, or CFC PAS/HAB as described in subparagraph (A) of this paragraph more than once during an IPC period.

(d) If the CMA is notified by the DSA that the individual is receiving habilitation, out-of-home respite in a camp described in §45.806(b)(2)(D) of this chapter, adaptive aids, nursing, or CFC PAS/HAB outside the catchment area in which the individual resides in accordance with §45.805(g)(1) of this chapter (relating to DSA: Service Delivery), the CMA must:

(1) if the individual receives habilitation, out-of-home respite in a camp, adaptive aids, nursing, or CFC PAS/HAB outside the catchment area, provide an oral explanation to the individual or LAR, on or before the 35th day of the period services have been provided outside the catchment area, that:

(A) to ensure the continued provision of habilitation, out-of-home respite in a camp, adaptive aids, nursing, or CFC PAS/HAB, the individual must do one of the following before the 61st day:

(i) transfer to a DSA contract for the catchment area in which the individual is receiving habilitation, out-of-home respite in a camp, adaptive aids, nursing, or CFC PAS/HAB; or

(ii) return to the catchment area in which the individual resides; and

(B) if the individual receives habilitation, out-of-home respite in a camp, adaptive aids, nursing, or CFC PAS/HAB outside the catchment area during a period of 60 consecutive days, the individual must return to the catchment area in which the individual resides and receive services in that catchment area before the DSA may accept another request from the individual or LAR that the DSA provide habilitation, out-of-home respite in a camp, adaptive aids, nursing, or CFC PAS/HAB outside the catchment area; and

(2) if the individual or LAR expresses a desire for the individual to transfer to a DSA contract for the catchment area in which the individual is receiving habilitation, out-of-home respite in a camp, adaptive aids, nursing, or CFC PAS/HAB:

(A) give the individual and LAR or person actively involved with the individual a written list of CMAs and DSAs serving the catchment area in which the individual is receiving habilitation, out-of-home respite in a camp, adaptive aids, nursing, or CFC PAS/HAB;

(B) have the individual or LAR select a CMA and DSA by completing a Selection Determination form as described in the *CLASS Provider Manual;* and

(C) coordinate the individual's transfer in accordance with §45.401 of this chapter (relating to Coordination of Transfers).

(e) If an individual requests that the case manager convene a meeting of the service planning team to discuss the DSA's reasons for declining a request to allow services to be provided outside the catchment area as described in §45.805(h)(1)(B) of this chapter, the case manager must:

(1) convene the meeting to review the reasons the DSA declined the request that was submitted by the DSA; and

(2) facilitate a discussion between the individual or LAR and DSA during the meeting regarding the reasons the DSA declined the request.

(f) If an individual's CLASS Program services and CFC services are terminated in accordance with Subchapter D of this chapter (relating to Transfer, Denial, Suspension, Reduction, and Termination of Services), the CMA must ensure that the case manager informs the individual of:

(1) alternative long-term services and supports in the community, including CFC services through a managed care organization; and

(2) institutional services.

(g) A CMA must have documentation that it provided the oral explanation and information as required under subsections (b), (c)(1)(A), (c)(2) and (3), and (d)(1) of this section and convened a meeting as required under subsection (e) of this section.

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

Filed with the Office of the Secretary of State on February 29, 2016.

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Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
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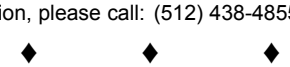

SUBCHAPTER H. ADDITIONAL DSA REQUIREMENTS

40 TAC §§45.803 - 45.805, 45.807, 45.808

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

§45.804. Training of DSA Staff Persons.

(a) A DSA must ensure:

(1) that a DSA staff person who has direct contact with an individual completes training as described in the *CLASS Provider Manual;*

(2) that a DSA staff person completes training on the CLASS Program and CFC, including the requirements of this chapter and the CLASS Program services and CFC services described in §45.104 of this chapter (relating to Description of the CLASS Program and CFC Option); and

(3) that a DSA staff person who is responsible for developing the PAS/HAB plan completes person-centered service planning training approved by HHSC:

(A) by June 1, 2017, if the staff person was hired on or before June 1, 2015; or

(B) within two years after the hire date, if the staff person was hired after June 1, 2015.

(b) A DSA must ensure that, before providing services to an individual:

(1) a service provider of habilitation completes:

(A) two hours of orientation covering the following:

(i) an overview of related conditions; and

(ii) an explanation of commonly performed tasks regarding habilitation;

(B) training in cardiopulmonary resuscitation and choking prevention that includes an in-person evaluation by a qualified instructor of the service provider's ability to perform these actions; and

(C) training in the habilitation activities necessary to meet the needs and characteristics of the individual to whom the service provider is assigned, in accordance with the *CLASS Provider Manual,* with training to occur in the individual's home with full participation from the individual, if possible; and

(2) a service provider of CFC PAS/HAB completes:

(A) two hours of orientation covering the following:

(i) an overview of related conditions; and

(ii) an explanation of commonly performed CFC PAS/HAB activities;

(B) training in the CFC PAS/HAB activities necessary to meet the needs and characteristics of the individual to whom the service provider is assigned, in accordance with the *CLASS Provider*

Manual, with training to occur in the individual's home with full participation from the individual, if possible.

(c) A DSA must, if requested by the individual or LAR:

(1) allow the individual or LAR to train a CFC PAS/HAB service provider in the specific assistance needed by the individual and to have the service provider perform CFC PAS/HAB in a manner that comports with the individual's personal, cultural, or religious preferences; and

(2) ensure that a CFC PAS/HAB service provider attends training by HHSC or DADS so the service provider meets any additional qualifications desired by the individual or LAR.

(d) The supervisor of a service provider of habilitation or CFC PAS/HAB must, in accordance with the *CLASS Provider Manual,* evaluate the performance of the service provider, in person, to ensure the needs of the individual are being met. The evaluation must occur annually.

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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Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
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For further information, please call: (512) 438-4855

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SUBCHAPTER I. FISCAL MONITORING

40 TAC §45.902

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

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

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Department of Aging and Disability Services
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For further information, please call: (512) 438-4855

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CHAPTER 49. CONTRACTING FOR COMMUNITY SERVICES

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), amendments to §49.102, in Subchapter A, Application and Definitions; and §49.551, in Subchapter E, Enforcement by DADS and Termination by Contractor, in Chapter 49, Contracting for Community Services, without changes to the proposed text as published in the November 27, 2015, issue of the *Texas Register* (40 TexReg 8626).

The adopted rules in Chapter 49, Contracting for Community Services, implement Community First Choice (CFC), a Medicaid state plan option governed by the Code of Federal Regulations, Title 42 (42 CFR), Chapter 441, Subchapter K, regarding Home and Community-Based Attendant Services and Supports State Plan Option (Community First Choice). CFC services are available to individuals enrolled in the DADS §1915(c) waiver programs of the Home and Community-based Services (HCS) Program, Texas Home Living (TxHmL) Program, the Community Living Assistance and Support Services (CLASS) Program, and the Deaf-Blind with Multiple Disabilities (DBMD) Program. CFC is authorized by Texas Government Code §534.152 and is governed by rules of the Texas Health and Human Services Commission in Texas Administrative Code, Title 1, Chapter 354, Medicaid Health Services, Subchapter A, Purchased Health Services, Division 27, Community First Choice (CFC). The Centers for Medicare and Medicaid Services (CMS) approved a state plan amendment to implement CFC effective June 1, 2015. Texas Government Code, §534.152(g) authorizes DADS to contract with providers participating in the HCS, TxHmL, CLASS, and DBMD Programs for the delivery of basic attendant and habilitation services through CFC and gives DADS regulatory and oversight authority over those providers.

DADS received no comments regarding adoption of the amendments.

SUBCHAPTER A. APPLICATION AND DEFINITIONS

40 TAC §49.102

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid;

Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

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

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Department of Aging and Disability Services
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For further information, please call: (512) 438-4855

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SUBCHAPTER E. ENFORCEMENT BY DADS AND TERMINATION BY CONTRACTOR

DIVISION 6. TERMINATION BY CONTRACTOR

40 TAC §49.551

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

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

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Lawrence Hornsby
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Department of Aging and Disability Services
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For further information, please call: (512) 438-4855

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CHAPTER 79. LEGAL SERVICES

SUBCHAPTER E. ADVISORY COMMITTEES

40 TAC §§79.401 - 79.404, 79.406

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), the repeal of Subchapter E, Advisory Committees, consisting of §§79.401, 79.402, 79.403, 79.404, and 79.406, in Chapter 79, Legal Services, without changes to the proposed text as published in the December 11, 2015, issue of the *Texas Register* (40 TexReg 8878).

The purpose of the repeal is, along with new Chapter 89, to implement §531.012 of the Texas Government Code, as amended by Senate Bill 200 of the 84th Legislature, Regular Session, 2015. Section 531.012 requires the executive commissioner of the Texas Health and Human Services Commission to establish and maintain advisory committees to solicit input from the public to address key issues of concern across the health and human services system. Section 531.012 also requires the executive commissioner to adopt rules to govern advisory committees in compliance with Texas Government Code, Chapter 2110, and to address topics specified in §531.012.

The repeal deletes rules about advisory committees that have been abolished and the Nursing Facility Administrators Advisory Committee (NFAAC). The NFAAC is described in new §89.6.

DADS received no comments regarding adoption of the repeal.

The repeals are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.012, which authorizes the executive commissioner to establish and maintain advisory committees.

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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Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
Effective date: March 20, 2016
Proposal publication date: December 11, 2015
For further information, please call: (512) 438-2430

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CHAPTER 89. ADVISORY COMMITTEES

40 TAC §§89.1 - 89.7

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), new §§89.1 - 89.7, in Chapter 89, Advisory Committees. New §§89.4, 89.5, and 89.7 are adopted with changes to the proposed text as published in the December 11, 2015, issue of the *Texas Register* (40 TexReg 8879). New §§89.1 - 89.3 and 89.6 are adopted without changes to the proposed text.

The purpose of new Chapter 89 is to implement §531.012 of the Texas Government Code, as amended by Senate Bill 200 of the 84th Legislature, Regular Session, 2015. Section 531.012 requires the executive commissioner of the Texas Health and Human Services Commission to establish and maintain advisory committees to solicit input from the public to address key issues of concern across the health and human services system. Section 531.012 also requires the executive commissioner to adopt rules to govern advisory committees in compliance with Texas Government Code, Chapter 2110, and to address topics specified in §531.012. The new rules govern the advisory committees established to consider issues related to DADS.

The adopted rules describe the purpose, tasks, membership composition, quorum requirements, reporting requirements, and abolishment date of the Aging and Disability Resource Center Advisory Committee, Aging Texas Well Advisory Committee, Foster Grandparent Program Advisory Councils (FGPAC), Nursing Facility Administrators Advisory Committee, and the Texas Respite Advisory Committee (TRAC).

A change was made to §89.4 to correct the lettering of a subsection. The quorum requirements in §89.5(c) and §89.7(c) were reduced to facilitate regular committee meetings of the FGPAC and TRAC. A change was made to §89.7(a) to correct a citation to the Texas Human Resources Code.

DADS received no comments regarding adoption of the new sections.

The new sections are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.012, which authorizes the executive commissioner to establish and maintain advisory committees.

§89.4. Aging Texas Well Advisory Committee.

(a) Executive Order RP-42 created the Aging Texas Well Advisory Committee (ATWAC) and established the purpose and responsibilities of ATWAC. The ATWAC advises and makes recommendations to DADS consistent with Executive Order RP-42.

(b) The tasks of the ATWAC include:

(1) identifying and discussing aging policy issues;

(2) assessing state government readiness to address issues facing older Texans;

(3) promoting increased local community preparedness for aging Texans; and

(4) assisting DADS by providing recommendations, including recommendations for changes to the Aging Texas Well Plan.

(c) The composition of the membership of the ATWAC, and the number of members required to convene a meeting and transact committee business are set forth in the ATWAC by-laws.

(d) The ATWAC meets quarterly and submits reports of committee meetings to the commissioner or designee. The frequency and type of reports are set forth in the ATWAC by-laws.

(e) The ATWAC is abolished on March 1, 2026.

§89.5. Foster Grandparent Program Advisory Councils.

(a) The Domestic Volunteer Service Act of 1973 (United States Code, Title 42 §§4950 et seq.) and Code of Federal Regulations, Title 45, §2552.24 require the creation of advisory councils to secure community participation in the local operation of the Foster Grandparent Program (the Program). DADS operates the Program in eight geographically defined service areas where foster grandparents are recruited, enrolled, and assigned. An independent Foster Grandparent Program Advisory Council (FGPAC) is located in each service area.

(b) The tasks of an FGPAC include:

(1) assisting the Program to recruit volunteers and volunteer stations where foster grandparents are assigned;

(2) assisting the Program to meet its administrative and program responsibilities, including fund-raising, publicity, and volunteer recognition events;

(3) assisting with annual appraisals or surveys of the Program; and

(4) assisting the Program to recruit FGPAC members.

(c) An FGPAC is composed of no more than 15 members. A quorum of 5 members is required to convene a meeting and transact business.

(d) The membership of an FGPAC must be diverse and reflect the demographics of the geographically defined service area in which foster grandparents are assigned. Members must be knowledgeable of the human and social needs of the service area, competent in the fields of community service, volunteerism, and children's issues, and must be able to assist the FGPAC in completing the tasks described in subsection (b) of this section.

(e) An FGPAC meets no less than semi-annually and submits minutes of the meetings to the commissioner or designee.

(f) The FGPACs are abolished on March 1, 2026.

§89.7. Texas Respite Advisory Committee.

(a) The Lifespan Respite Care Act (United States Code, Title 42, §300ii) authorizes a state agency to collaborate with a public or private statewide coalition to address the respite needs of family caregivers of adults or children with special needs. Texas Human Resources Code §161.079 directs DADS to coordinate public awareness outreach efforts regarding the role of informal long-term care caregivers. Texas Human Resources Code, Chapter 161, Subchapter F, creates the Lifespan Respite Services Program operated by DADS. The Texas Respite Advisory Committee (TRAC) assists DADS to develop strategies to reduce barriers to accessing respite services; improve the quality of respite services; and provide training, education, and support to family caregivers.

(b) The tasks of the TRAC include:

(1) assisting DADS to identify barriers and best practices for providing and coordinating respite services in Texas;

(2) responding to requests from DADS for information about the respite needs of caregivers;

(3) advising DADS about effective methods for expanding the availability of affordable respite services in Texas through the use of funds available from respite care programs;

(4) cooperating and sharing resources and knowledge among community stakeholders to facilitate barrier free access for primary caregivers; and

(5) educating the public on the need for community-based options for primary caregivers.

(c) The TRAC is composed of no more than 24 members. A quorum of 5 members is required to convene and transact committee business. Members must represent family caregivers, primary caregivers, respite care advocacy organizations, faith-based organizations, and members of public interested in the issue of respite care.

(d) The TRAC meets quarterly and submits quarterly reports of committee meetings to the commissioner or designee.

(e) The TRAC is abolished on March 1, 2026.

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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Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
Effective date: March 20, 2016
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For further information, please call: (512) 438-2430

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PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 374. DISCIPLINARY ACTIONS/DETRIMENTAL PRACTICE/COMPLAINT PROCESS/CODE OF ETHICS

40 TAC §374.4

The Texas Board of Occupational Therapy Examiners adopts an amendment to §374.4, Code of Ethics, concerning the code of ethics, without changes to the proposed text as published in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8741). The rule will not be republished.

The amendment will update in §374.4 the code of ethics and the principles and related standards of conduct associated with such; the amendment includes further clarifications and cleanups, as well.

The amendment will remove the 2010 version of the Occupational Therapy Code of Ethics by the American Occupational Therapy Association from §374.4 and will replace it with the excerpted principles and related standards of conduct from the 2015 version of the American Occupational Therapy Association's Occupational Therapy Code of Ethics.

One comment was received by the Board from Chrissy Vogeley, Manager of State Affairs of the American Occupational Therapy Association, in support of the proposed amendment and the inclusion of the principles and related standards of conduct from AOTA's 2015 Occupational Therapy Code of Ethics. The Board acknowledged the comment and made no changes to the amendment based on the comment. The language of the amendment remains the same as was initially proposed.

The amendment is adopted under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational 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.

Filed with the Office of the Secretary of State on February 29, 2016.

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John P. Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Effective date: April 1, 2016
Proposal publication date: December 4, 2015
For further information, please call: (512) 305-6900

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PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 800. GENERAL ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §800.5

The Texas Workforce Commission (Commission) adopts amendments to the following section of Chapter 800, relating to General Administration *without* changes, as published in the November 6, 2015, issue of the *Texas Register* (40 TexReg 7803):

Subchapter A. General Provisions, §800.5

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the adopted Chapter 800 rule change is to comply with House Bill (HB) 3337, passed by the 84th Texas Legislature, Regular Session (2015). HB 3337, relating to training and education for state agency administrators and employees, amends Texas Government Code, Chapter 656, by establishing additional requirements for reimbursement for training or education offered by an institution of higher education, including:

--authorization by the agency executive director before tuition reimbursement payment may be made (§656.048(b));

--implementation of an objective policy governing tuition reimbursement, including online courses and courses not credited toward a degree (§656.102(b)(1)); and

--posting the tuition assistance program policy on the agency's website (§656.102 (c)).

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

The Commission adopts the following amendments to Subchapter A:

§800.5. Commission Professional Development Program

The title of §800.5, "Commission Professional Development Program" is amended to read "Tuition Assistance Program" (TAP), as the new title more accurately describes the reimbursement program, available to employees who seek education at institutions of higher education, which will in turn improve their skill sets in current or prospective job duties for the agency's benefit.

Section 800.5(b)(1) is amended to state that eligibility for tuition assistance requires continuous and full-time employment for one year at the time of application.

Section 800.5(b)(3) is amended to add "identification of" the relationship of the training to the employee's position and to add "or a prospective role within the Agency";

Section 800.5(b)(4) is amended to remove "or his designee" from authorization of training reimbursement from the executive director or designee.

New §800.5(b)(5) is added to specify that the training and education program must be at an accredited institution of higher education, as required by HB 3337.

Section 800.5(c)(1) is amended to be consistent with HB 3337 by specifying that the employee shall "attend and successfully" complete the training, and adds "or education program."

Section 800.5(c)(2) is amended, as required by HB 3337, to state that training is conditional upon "authorization" from the executive director and removes the executive director's designee.

New §800.5(c)(3) is amended to align with the Agency's personnel manual to update language regarding employee participation in the TAP. The employee must agree in writing, prior to beginning the coursework or an exam, to fulfill a six-month service commitment with the Agency.

New §800.5(c)(4) is added to align with the Agency's personnel manual to update language regarding employee noncompliance in the length of service requirement. The employee must reimburse the Agency the cost of training and expenses.

New §800.5(c)(5) is added to align with the Agency's personnel manual to update language regarding employees who are unable to comply with the length of service requirement due to extraordinary circumstances beyond their control. Employees meeting this criterion may request that the executive director waive the reimbursement of the cost of training activities.

New §800.5(c)(6) is added to align with the Agency's personnel manual to update language regarding employees' approved flex work schedule--provided there is no negative impact on customers or work production--and adds that employees cannot use work hours for TAP activities.

New §800.5(d) is added to state that any information relating to application for and receipt of reimbursement for training and education shall be reported to the Commission on a quarterly basis.

No comments were received.

The Agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

The rule is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rule affects Title 4, Texas Labor Code, Chapters 301 and 302.

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 23, 2016.

TRD-201600867
Patricia Gonzalez
Deputy Director, Workforce Development Division Programs
Texas Workforce Commission
Effective date: March 14, 2016
Proposal publication date: November 6, 2015
For further information, please call: (512) 475-0829

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SUBCHAPTER G. PETITION FOR ADOPTION OF RULES

40 TAC §800.252

The Texas Workforce Commission (Commission) adopts amendments to the following section of Chapter 800, relating to General Administration, *without* changes, as published in the November 6, 2015, issue of the *Texas Register* (40 TexReg 7805):

Subchapter G. Petition for Adoption of Rules, §800.252

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the adopted Chapter 800 rule change is to comply with House Bill 763 passed by the 84th Texas Legislature, Regular Session (2015). House Bill 763 amends Texas Government Code §2001.021, Petition for Adoption of Rules, by providing a definition of "interested person" for the Commission's long-standing procedures for the submission, consideration, and disposition of a rulemaking petition.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER G. PETITION FOR ADOPTION OF RULES

The Commission adopts the following amendments to Subchapter G:

§800.252. Definitions

New §800.252(2) adds the definition of "interested person" to the list of words and terms in this subchapter. An interested person is defined as:

(A) a resident of this state;

(B) a business entity located in this state;

(C) a governmental subdivision located in this state; or

(D) a public or private organization located in this state that is not a state agency.

No comments were received.

The Agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

The rule is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rule affects Title 4, Texas Labor Code, Chapters 301 and 302.

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 23, 2016.

TRD-201600868
Patricia Gonzalez
Deputy Director, Workforce Development Division Programs
Texas Workforce Commission
Effective date: March 14, 2016
Proposal publication date: November 6, 2015
For further information, please call: (512) 475-0829

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CHAPTER 809. CHILD CARE SERVICES
SUBCHAPTER G. TEXAS RISING STAR PROGRAM

40 TAC §809.130

The Texas Workforce Commission (Commission) adopts amendments to the following section of Chapter 809, relating to Child Care Services, *without* changes, as published in the November 20, 2015, issue of the *Texas Register* (40 TexReg 8187):

Subchapter G. Texas Rising Star Program, §809.130

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the amendment to §809.130(e) is to require a regular review of the Texas Rising Star (TRS) guidelines as required by Texas Government Code §2308.3155(b).

The 84th Texas Legislature, Regular Session (2015), enacted Senate Bill 208, which amends Texas Government Code §2308.3155(b) to require that the Commission adopt the Agency's Chapter 809 Child Care Services rules relating to TRS to include:

. . . a timeline and process for regularly reviewing and updating the quality standards used to determine the rating system that includes the Commission's consideration of input from interested parties regarding those standards.

Texas Government Code §2001.039 requires state agencies to review and consider for readoption each of its rules not later than the fourth anniversary of the date on which the rules take effect and every four years after that date. State agencies are required to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule. The next scheduled review of Chapter 809, including Subchapter G, Texas Rising Star Program rules, is in December 2019.

The amended §809.130(e) requires a regular review of the TRS guidelines every four years, in alignment with the four-year rule review process under Texas Government Code §2001.039. Therefore, the next review of the TRS guidelines will occur in conjunction with the scheduled four-year rule review of Chapter 809 in December 2019.

Additionally, pursuant to Texas Government Code §2308.3155(b), the review of the TRS guidelines requires input from interested parties (stakeholders), and that at least one public hearing be held prior to submitting TRS guidelines stakeholders' recommendations to the Commission.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER G. TEXAS RISING STAR PROGRAM

The Commission adopts the following amendments to Subchapter G:

§809.130. Short Title and Purpose

Amended §809.130(e) adds new paragraph (1) requiring that the Commission review and update the TRS guidelines at a minimum of every four years in conjunction with the rule review of Chapter 809, conducted pursuant to Texas Government Code §2001.039.

Section 809.130(e)(1)(A) requires that the review and update consider input from stakeholders.

Section 809.130(e)(1)(B) requires at least one public hearing prior to submitting the stakeholder input to the Commission.

Section 809.130(e)(1) is renumbered as new §809.130(e)(2) without changes.

New §809.130(e)(2) is renumbered as new §809.130(e)(3) and amended to state that the Commission may review and amend the TRS guidelines as necessary, provided that the amendments are adopted subject to the requirements of the Texas Open Meetings Act.

Comment:

One commenter agreed with the amendments as proposed. One commenter supported the input from stakeholders, particularly

from child care providers. The commenters requested multiple formats (fax, e-mail, workgroups, and public hearings) by which to provide input.

Response:

The Commission agrees and supports multiple formats and opportunities for child care providers, as well as the general public, to have input to the TRS guidelines review and update. In addition to input through fax and e-mail, the Commission accepts public input during the regularly scheduled Commission meetings. Additionally, the Commission encourages child care providers to provide input to the Local Workforce Development Boards (Boards) regarding the TRS program. Agency staff has regularly scheduled meetings with Boards and receives input from Boards regarding all Agency programs, including the TRS program.

Comment:

One commenter strongly supported the scheduling of a public hearing that will offer child care providers face-to-face communication with the Commission members in order to hear the discussion firsthand and offer verbal input. Another commenter stated that one public hearing is not sufficient in order to have adequate input from all areas of the state. The commenter recommended that there be at least one hearing in each local workforce development area every four years.

Response:

The Commission notes that the rule language states that there be "at least one" public hearing prior to submitting stakeholder input to the Commission. The Commission regularly solicits input from stakeholders through a variety of methods throughout the year. Along with regular Commission public meetings, the Commission conducts public meetings specific to child care and encourages stakeholders and the general public to provide input and comments on all aspects of the state's subsidized child care system, including the TRS program.

COMMENTS WERE RECEIVED FROM:

Marisela Correa, Upper Rio Grande Workforce Development Board (Borderplex)

Elisa Shepherd, Government Relations Manager, Knowledge Universe US

Pat Smith, Executive Director, Little Dudes (verbal testimony at public hearing, December 16, 2015, Dallas, Texas)

The Agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

The rule is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and Texas Human Resources Code §44.002, regarding Administrative Rules.

The adopted rule affects Texas Labor Code, Title 4, Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

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 23, 2016.

TRD-201600869
Patricia Gonzalez
Deputy Director, Workforce Development Division Programs
Texas Workforce Commission
Effective date: March 14, 2016
Proposal publication date: November 20, 2015
For further information, please call: (512) 475-0829

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CHAPTER 843. JOB MATCHING SERVICES
SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §843.3

The Texas Workforce Commission (Commission) adopts the following new section to Chapter 843, relating to Job Matching Services *without* changes, as published in the November 6, 2015, issue of the *Texas Register* (40 TexReg 7806):

Subchapter A. General Provisions, §843.3

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the adopted Chapter 843 rule change is to comply with Senate Bill (SB) 374, passed by the 84th Texas Legislature, Regular Session (2015). SB 374, relating to state agencies' participation in the federal electronic verification of employment authorization program, E-Verify, amends Texas Government Code, Chapter 673, by adding that state agencies and institutions of higher education as defined by Texas Education Code §61.003 are required to use E-Verify for all newly hired employees.

Additionally, the Agency has provided notice, registration information, and online forms for the E-Verify program to all agency heads, human resource directors, and university presidents. The Agency also will provide technical assistance, upon request.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

The Commission adopts the following amendments to Subchapter A:

§843.3. Public Employer Requirements Regarding E-Verify

New §843.3(a) adds that state agencies and institutions of higher education must register and participate in the federal electronic verification of employment authorization E-Verify for all newly hired employees, as required by Texas Government Code §673.002.

New §843.3(b) adds that, in accordance with Texas Government Code, §673.002, the Agency shall provide notice, registration information, and online forms for the E-Verify program to state agencies, and may provide technical assistance, upon request.

No comments were received.

The Agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

The rule is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rule affects Texas Labor Code, Chapter 302, and Texas Government Code, Chapter 657.

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 23, 2016.

TRD-201600870
Patricia Gonzalez
Deputy Director, Workforce Development Division Programs
Texas Workforce Commission
Effective date: March 14, 2016
Proposal publication date: November 6, 2015
For further information, please call: (512) 475-0829

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TITLE 43. TRANSPORTATION

PART 3. AUTOMOBILE BURGLARY AND THEFT PREVENTION AUTHORITY

CHAPTER 57. AUTOMOBILE BURGLARY AND THEFT PREVENTION AUTHORITY

43 TAC §§57.9, 57.14, 57.18, 57.48, 57.51

The Automobile Burglary and Theft Prevention Authority (ABTPA) adopts amendments to §57.9, Nonsupplanting Requirement; §57.14, Approval of Grant Projects; §57.18, Grant Adjustments; §57.48, Motor Vehicle Years of Insurance Calculations; and §57.51, Refund Determinations. Amended §§57.9, 57.18, and 57.51 are adopted with changes to the proposed text as published in the November 13, 2015, issue of the *Texas Register* (40 TexReg 8016) and will be republished. Amended §57.14 and §57.48 are adopted without changes to the proposed text and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Amendments to §57.9, Nonsupplanting Requirement, add language which defines and clarifies "supplanting," and makes it clear that the term also includes existing resources already available to a program as a cash match.

Amendments to §57.14, Approval of Grant Projects, remove the category, Public Awareness, Crime Prevention, and Education; and add the category, Educational Programs and Marketing, as stated in statute to the program categories eligible for consideration for funding.

Amendments to §57.18, Grant Adjustments, clarify grant adjustments for overtime, job positions, and out-of-state travel and add that notification is to be provided to the ABTPA director of changes of designated officials.

Amendments to §57.48, Motor Vehicle Years of Insurance Calculations, update and clarify the rule with current statute.

Amendments to §57.51, Refund Determinations, implement House Bill 2424, 84th Legislature, Regular Session, 2015, which amended Texas Revised Civil Statutes Annotated Article 4413(37), §6A to change the time period in which a refund claim can be filed from six months to four years.

Amendments are made throughout the sections to revise terminology for consistency with Texas Department of Motor Vehicle (TxDMV) rules and with current ABTPA practice. In addition, nonsubstantive amendments correct punctuation, grammar, capitalization, and references throughout the sections.

COMMENTS

The department received three written comments.

Bryan Sudan, Commander of the Tarrant Regional Auto Crimes Task Force, commented in support of the proposed rule changes.

COMMENT

Lieutenant Tommy Hansen, of the Galveston County Sheriff's Department, expressed concerns that the term "existing resources" included in §57.9(b) is not clearly defined. Lieutenant Hansen is concerned that items, such as benefits, fuel, and other direct expenses, will no longer be considered a match, and agencies who have been fiscally responsible and who have been able to maintain program income to allow them to keep a level of service could be penalized. He highly recommends that this be discussed with the Board and the Grantees. In proposed amendments to §57.18(b) for the required written notification to the ABTPA of any changes, he suggests that the department add Program Manager (Commanders) along with project director, financial officer, and authorized official.

RESPONSE

Mr. Hansen now agrees to the change as proposed by ABTPA staff. No change will be made.

COMMENT

Lisa Davis, Insurance Tax Analyst of the Texas Comptroller of Public Accounts (CPA), suggested several changes. She has concerns on §57.48(a)(3) regarding the new definition of "motor vehicle" in Texas Civil Statutes, Article 4413(37), §1(5) and Insurance Code, Article 5.01(e). She believes that two different definitions might be problematic. She recommends keeping the existing rule language because Art. 4413 is used as a reference to Art. 5.01(e), which is appropriate given that Art. 5.01(e) is broader and the article addresses motor vehicle or automobile insurance for ratemaking purposes. She explains that the comptroller policy has always been that if an insurer writes any form of motor vehicle insurance, then the motor vehicle years are subject to the ABTPA assessment. Ms. Davis also suggests minor changes to §57.51(a) by adding that the amended report for each period and submission of a written claim be to the director or the ABTPA board. On §57.51(c), Ms. Davis suggests replacing the language "financial advisors" with "a third party, such as the state comptroller." Additionally on §57.51(e), she recommends replacing the language, "on the funds available to the ABPTA for the purpose of refunding monies overpaid" with "for the purpose of refunding overpayments."

RESPONSE

The APTPA agrees with the CPA's comments on both §57.48 and §57.51 and included changes to the proposed rule text to address the comments accordingly.

STATUTORY AUTHORITY

The amendments are adopted under Texas Civil Statutes, Article 4413(37), §6(a), which provides the Board of the Automobile Burglary and Theft Prevention Authority with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the ABTPA.

CROSS REFERENCE TO STATUTE

Texas Civil Statutes, Article 4413(37).

§57.9. Nonsupplanting Requirement.

(a) State funds provided by this Act shall not be used to supplant state or local funds.

(b) Supplanting means the replacement of other funds with ABTPA grant funds. It shall also include using existing resources already available to a program activity as cash match.

(c) Positions which existed prior to new grant award approval and were funded from any source other than ABTPA grant funds are not eligible for grant funding or to be used as cash match.

(d) If a grant program is reduced by 20% or more from the previous year, and as a result, grant funded or match positions are transferred to other duties for the grant year, they may be returned to grant funding in the subsequent grant year. This exception is not available for any positions that have not been grant funded or used as match for more than one grant year.

(e) Each grantee shall certify that ABTPA funds have not been used to replace state or local funds that would have been available in the absence of ABTPA funds. The certification shall be incorporated in each grantee's expenditure report.

§57.18. Grant Adjustments.

(a) The grantee must secure prior written approval from the ABTPA director for any of the following:

(1) changes in the need, objectives, approach, or geographical location of the grant;

(2) transfers of funds among direct cost categories exceeding 5.0% of the total grant budget;

(3) changes in overtime, confidential funds, the number of positions or job descriptions of personnel specified in the grant agreement;

(4) changes in equipment amounts, types, or methods of acquisition;

(5) out-of-state travel not specified in the grant agreement; or

(6) other changes for which the grant agreement or uniform grant and contract management standards require prior approval.

(b) The grantee must provide written notification to the ABTPA director within five days from the date of any change in the program director, financial officer, or authorized official.

§57.51. Refund Determinations.

(a) An insurer that seeks a determination of the sufficiency or a refund of a semi-annual payment must file an amended report for each period and submit a written claim to the director or the ABTPA board for a determination or a refund not later than four years after the date the semi-annual payment was made to the state comptroller.

(b) The director or the ABTPA board designee shall review the claim and obtain from the insurer any additional information, if any, that may be necessary or helpful to assist in the ABTPA determination. If an insurer refuses to provide the requested information, the refund shall be denied in whole or in part.

(c) The director or the ABTPA board designee is authorized to employ or retain the services of a third party, such as the state comptroller, to assist in the determination. The director or the designee shall prepare a written report to the ABTPA based on the director's or the designee's review and shall contain findings, conclusions, and a recommendation.

(d) The ABTPA shall base its determination on the documentary evidence considered by the director or the board designee. The ABTPA decision shall be based on a majority vote of the board. The ABTPA decision is final and is not subject to judicial review.

(e) Upon determining that an insurer is entitled to a refund, the ABTPA shall notify the comptroller and request the comptroller to draw warrants for the purpose of refunding overpayments.

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 29, 2016.

TRD-201600975
David Richards
General Counsel
Automobile Burglary and Theft Prevention Authority
Effective date: March 20, 2016
Proposal publication date: November 13, 2015
For further information, please call: (512) 465-5665

Review Of Agency Rules

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Board of Chiropractic Examiners

Title 22, Part 3

The Texas Board of Chiropractic Examiners (Board) will review all sections within the following chapters of Title 22, Part 3 of the Texas Administrative Code, in accordance with §2001.039 of the Texas Government Code:

Chapter 74 - Chiropractic Radiologic Technologists

The Board will consider whether the reasons for initially adopting these rules continue to exist and whether these rules should be repealed, readopted, or readopted with amendments.

Any repeals or necessary amendments identified during the review of these rules will be proposed and published in the Texas Register in accordance with Chapter 2001 of the Texas Government Code.

If you wish to comment on whether these rules should be repealed, readopted, or readopted with amendments, you must do so in writing no later than April 18, 2016. Comments received after that date may not be considered.

Comments should clearly specify the particular section of the rule to which they apply and include proposed alternative language as appropriate. General comments should be designated as such.

Comments may be submitted by email at Rules@tbce.state.tx.us or by mailing or delivering your comments to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701.

TRD-201600935
Bryan Snoddy
General Counsel
Texas Board of Chiropractic Examiners
Filed: February 25, 2016

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Office of Consumer Credit Commissioner

Title 7, Part 5

The Finance Commission of Texas (commission) files this notice of intention to review and consider for readoption, revision, or repeal Texas Administrative Code, Title 7, Part 5, Chapter 82, concerning Administration. Chapter 82 consists of §82.1, concerning Custody of Criminal History Record Information; §82.2, concerning Public Information Requests; Charges; §82.3, concerning Request for Criminal History Evaluation Letter; and §82.4, concerning Consumer Complaint Process.

This rule review will be conducted pursuant to Texas Government Code, §2001.039. The commission will accept comments received on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register* as to whether the reasons for adopting these rules continue to exist.

The Office of Consumer Credit Commissioner, which administers these rules, believes that the reasons for adopting the rules contained in this chapter continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, or by e-mail to laurie.hobbs@occc.texas.gov. Any proposed changes to the rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 31-day public comment period prior to final adoption or repeal by the commission.

TRD-201601053
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: March 1, 2016

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State Board of Dental Examiners

Title 22, Part 5

The State Board of Dental Examiners (Board) files this notice of intent to review 22 TAC Chapter 110, concerning Sedation and Anesthesia, in accordance with the Texas Government Code, §2001.039.

As required by §2001.039 of the Texas Government Code, the Board will accept comments and make a final assessment regarding whether the reason for adopting these rules continues to exist.

Comments on the rule review may be submitted to Simone Salloum, Assistant General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732, Fax (512) 463-7452, rulecomments@tsbde.texas.gov no later than 30 days from the date that the proposed rule is published in the *Texas Register.*

TRD-201601023
Nycia Deal
General Counsel
State Board of Dental Examiners
Filed: February 29, 2016

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Finance Commission of Texas

Title 7, Part 1

The Finance Commission of Texas (commission) files this notice of intention to review and consider for readoption, revision, or repeal Texas Administrative Code, Title 7, Part 1, Chapter 1, Subchapter B, concerning Interpretations and Advisory Letters. Subchapter B consists of §1.201, concerning Interpretations and Advisory Letters.

This rule review will be conducted pursuant to Texas Government Code, §2001.039. The commission will accept comments received on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register* as to whether the reasons for adopting this rule continue to exist.

The Office of Consumer Credit Commissioner, which administers this rule, believes that the reasons for adopting the rule contained in this chapter continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, or by email to laurie.hobbs@occc.texas.gov. Any proposed changes to the rule as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 31-day public comment period prior to final adoption or repeal by the commission.

TRD-201601052
Leslie L. Pettijohn
Consumer Credit Commissioner
Finance Commission of Texas
Filed: March 1, 2016

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Department of Information Resources

Title 1, Part 10

Review of 1 TAC 206, State Websites Department of Information Resources

The Texas Department of Information Resources (DIR) files this notice of intention to review and consider for re-adoption, revision, or repeal 1 TAC Chapter 206, §§206.1 - 206.75 "State Websites." The review and consideration of the rules are conducted in accordance with Texas Government Code, §2001.039. The review will include, at a minimum, an assessment by DIR of whether the reasons the rules were initially adopted continue to exist and whether the rules should be re-adopted.

Any questions or written comments pertaining to this rule review may be submitted to Martin Zelinsky, General Counsel, via mail at P.O. Box 13654, Austin, Texas 78711, via facsimile transmission at (512) 475-4759 or via electronic mail to martin.zelinsky@dir.texas.gov. The deadline for comments is thirty (30) days after publication of this notice in the *Texas Register*. Any proposed changes to the rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rule changes will be open for public comment prior to the final adoption or repeal of the rule by DIR in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

TRD-201600940
Martin H. Zelinsky
General Counsel
Department of Information Resources
Filed: February 25, 2016

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Texas Board of Occupational Therapy Examiners

Title 40, Part 12

The Texas Board of Occupational Therapy Examiners files this notice of its intent to review the following chapters in accordance with Texas Government Code §2001.039:

Chapter 361, concerning statutory authority; Chapter 362, concerning definitions; Chapter 363, concerning consumer/licensee information; Chapter 364, concerning requirements for licensure; Chapter 367, concerning continuing education; Chapter 368, concerning open records; Chapter 369, concerning display of licenses; Chapter 370, concerning license renewal; Chapter 371, concerning inactive and retired status; Chapter 372, concerning provision of services; Chapter 373, concerning supervision; Chapter 374, concerning disciplinary actions/detrimental practice/complaint process/ code of ethics; Chapter 375, concerning fees; and Chapter 376, concerning registration of facilities.

An assessment will be made by the Texas Board of Occupational Therapy Examiners as to whether the reasons for adopting or readopting the chapters continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Texas Board of Occupational Therapy Examiners.

Comments on the review may be submitted to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to lea@ptot.texas.gov no later than 30 days from the date that this notice is published in the *Texas Register*.

TRD-201600970
John P. Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Filed: February 29, 2016

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Adopted Rule Reviews

Texas Board of Chiropractic Examiners

Title 22, Part 3

The Texas Board of Chiropractic Examiners (Board) has completed its review required by the Texas Government Code §2001.039 of the following chapters of Title 22, Part 3 of the Texas Administrative Code:

Chapter 73 - Facilities

The reviewed sections in these chapters are subsequently referred to collectively in this Notice of Adopted Review as "the sections."

The notice of proposed rule review was published in the October 2, 2015, issue of the *Texas Register* (40 TexReg 6941). As provided in this notice, the Board reviewed and considered the sections for readoption, revision, or repeal.

The Board considered whether the reasons for adoption of the sections continue to exist. The Board received no written comments regarding the review of the sections.

The Board has determined that the reasons for adopting the sections continue to exist and the sections are retained. Any revisions in the future will be accomplished in accordance with the Administrative Procedure Act.

This concludes and completes the Board's review of Chapter 73. The chapters will be reviewed again in the future in accordance with Government Code §2001.039.

TRD-201600934
Bryan Snoddy
General Counsel
Texas Board of Chiropractic Examiners
Filed: February 25, 2016

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Texas Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 33, Statement of Investment Objectives, Policies, and Guidelines of the Texas Permanent School Fund, Subchapter AA, Commissioner's Rules, pursuant to the Texas Government Code, §2001.039. The TEA proposed the review of 19 TAC Chapter 33, Subchapter AA, in the September 25, 2015 issue of the *Texas Register* (40 TexReg 6757).

The TEA finds that the reasons for adopting Subchapter AA continue to exist and readopts the rule. The TEA received no comments related to the review. At a later date, the TEA may propose an amendment to set forth a methodology for estimating the savings to charter districts that will accrue as a result of receiving the permanent school fund bond guarantee.

This concludes the review of 19 TAC Chapter 33.

TRD-201601044
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: March 1, 2016

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State Board for Educator Certification

Title 19, Part 7

The State Board for Educator Certification (SBEC) adopts the review of Title 19, Texas Administrative Code (TAC), Chapter 230, Professional Educator Preparation and Certification, pursuant to the Texas Government Code, §2001.039. The rules reviewed by the SBEC in 19 TAC Chapter 230 are organized under the following subchapters: Subchapter A, General Provisions; Subchapter B, General Certification Requirements; Subchapter C, Assessment of Educators; Subchapter D, Types and Classes of Certificates Issued; Subchapter E, Educational Aide Certificate; Subchapter F, Permits; Subchapter G, Certificate Issuance Procedures; and Subchapter H, Texas Educator Certificates Based on Certification and College Credentials from Other States or Territories of the United States. The SBEC proposed the review of 19 TAC Chapter 230 in the November 6, 2015 issue of the *Texas Register* (40 TexReg 7903).

Relating to the review of 19 TAC Chapter 230 the SBEC finds that the reasons for the adoption of Subchapters A-H continue to exist and readopts the rules. The SBEC received comments related to the review of Chapter 230. Following is a summary of the public comments received and the corresponding responses.

Comment: A representative of the Texas Classroom Teachers Association (TCTA) commented that the reasons to maintain Chapter 230 continue to exist. The commenter also suggested that in Chapter 230, Subchapter C, Assessment of Educators, the SBEC should take into consideration including circumstances involving disproportionate impact on certain types of certification examinations in defining good cause for purposes of rule language.

Board Response: The SBEC agreed that the reasons for adopting 19 TAC Chapter 230 continue to exist. The SBEC respectfully disagreed that there should be a consideration of disproportionate impact on certain types of certification examinations in defining good cause for purposes of rule language. The SBEC took action to define good cause with the intent of ensuring that a candidate is better prepared to be successful on a subsequent examination by participating in relevant educational activities, as part of the proposed amendment to 19 TAC §230.21 found in the Proposed Rules section of this issue.

This concludes the review of 19 TAC Chapter 230.

TRD-201601004
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Filed: February 29, 2016

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The State Board for Educator Certification (SBEC) adopts the review of Title 19, Texas Administrative Code (TAC), Chapter 232, General Certification Provisions, pursuant to the Texas Government Code, §2001.039. The rules reviewed by the SBEC in 19 TAC Chapter 232 are organized under the following subchapters: Subchapter A, Certificate Renewal and Continuing Professional Education Requirements, and Subchapter B, National Criminal History Record Information Review of Active Certificate Holders. The SBEC proposed the review of 19 TAC Chapter 232 in the November 6, 2015 issue of the *Texas Register* (40 TexReg 7903).

Relating to the review of 19 TAC Chapter 232 the SBEC finds that the reasons for the adoption of Subchapters A and B continue to exist and readopts the rules.

The SBEC received no comments related to the review of 19 TAC Chapter 232.

This concludes the review of 19 TAC Chapter 232.

TRD-201601005
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Filed: February 29, 2016

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Department of Information Resources

Title 1, Part 10

The Texas Department of Information Resources (department) has completed its review of 1 TAC Chapter 209, relating to Minimum Standards For Meetings Held By Videoconference, pursuant to §2001.039, Texas Government Code, which requires agency rules to be reviewed at least every four years. The department determined that the reasons for initially adopting 1 Texas Administrative Code Chapter 209 continue to exist. The department, therefore is readopting Chapter 209, concerning Minimum Standards For Meetings Held By Videoconference.

Notice of the rule review was published in the June 19, 2015, issue of the *Texas Register* (40 TexReg 4011). No comments were received as a result of that notice.

The department's review of 1 TAC Chapter 209 is concluded.

TRD-201600939

Martin H. Zelinsky
General Counsel
Department of Information Resources
Filed: February 25, 2016

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 4 TAC §41.8(b)(3)(B)

QUARANTINE SCHEDULE FOR INFESTED AND EXPOSED PREMISES

North of Highway 90

Date of Pasture Vacation or Systematic Treatment		Date of Pasture Release	
August	16 - 31	June	16 - 30
September	1 - 30	July	1 - 31
October	1 - 31	August	1 - 31
November	1 - 30	September	1 - 30
December	1 - 31	September	30
January	1 - 31	September	30
February	1 - 28	September	30
March	1 - 31	September	30
April	1 - 30	October	1 - 31
May	1 - 31	November	1 - 31
June	1 - 15	December	1 - 15

June 16 - **August** 15

	June														
V	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
R	16	19	22	25	28	31	3	6	9	12	15	18	21	24	27
	December						**January**								

	July														
V	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
R	30	2	5	8	11	14	17	20	23	26	1	4	7	10	13
	Jan	**February**									**March**				

	July															
V	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
R	17	20	23	26	29	1	4	7	10	13	16	19	22	25	28	1
	March					**April**										**May**

	August														
V	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
R	4	7	10	13	16	10	22	25	28	31	3	6	9	12	15
	May										**June**				

V - Date Vacated R - Date Released

Fever tick eradication activity must be started within two weeks from the time fever tick infestation or exposure is found and reported to the owner or his agent, unless otherwise prescribed by the Texas Animal Health Commission.

Date of Systematic Treatment is first treatment of all livestock with no cattle fever ticks found on scratch inspection.

QUARANTINE SCHEDULE FOR INFESTED AND EXPOSED PREMISES

South of Highway 90

Date of Pasture Vacation or Systematic Treatment		Date of Pasture Release	
August	1 - 31	May	1 - 31
September	1 - 30	June	1 - 30
October	1 - 31	July	1 - 31
November	1 - 30	August	1 - 31
December	1 - 31	September	1 - 30
January	1 - 31	September	30
February	1 - 28	September	30
March	1 - 31	September	30
April	1 - 30	October	1 - 31
May	1 - 31	November	1 - 31
June	1 - 15	December	1 - 15

June 16 - **July** 31

	June														
V	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
R	16	19	22	25	28	31	3	6	9	12	15	18	21	24	27
	December						**January**								

	July														
V	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
R	30	2	5	8	11	14	17	20	23	26	1	4	7	10	13
	Jan	**February**									**March**				

	July															
V	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
R	17	20	23	26	29	1	4	7	10	13	16	19	22	25	28	1
	March					**April**										**May**

V - Date Vacated R - Date Released

This eradication activity must be started within two weeks from the time tick infestation or exposure is found and reported to the owner or his agent, unless otherwise prescribed by the Texas Animal Health Commission.

Date of Systematic Treatment is first treatment of all livestock with no cattle fever ticks found on scratch inspection.

Figure: 19 TAC §230.21(e)

Certificate TAC Reference	Certificate Name	Required Content Test(s)	Pedagogy and Professional Responsibilities (PPR) Requirements
Art			
§233.10	Art: Early Childhood-Grade 12	178 Art EC-12 Texas Examinations of Educator Standards (TExES)	160 PPR EC-12 TExES
Bilingual Education			
§233.6	Bilingual Generalist: Early Childhood-Grade 6	192 Bilingual Generalist EC-6 TExES and 190 Bilingual Target Language Proficiency Test (BTLPT) – Spanish TExES	160 PPR EC-12 TExES
§233.6	Bilingual Generalist: Grades 4-8	119 Bilingual Generalist 4-8 TExES and 190 BTLPT – Spanish TExES	160 PPR EC-12 TExES
§233.6	Bilingual Education Supplemental: Spanish	164 Bilingual Education Supplemental TExES and 190 BTLPT – Spanish TExES	Not Applicable: Not a Stand-alone Certificate
§233.6	Bilingual Education Supplemental: American Sign Language	164 Bilingual Education Supplemental TExES and 184 American Sign Language (ASL) EC-12 TExES and 073 Texas Assessment of Sign Communications-American Sign Language (TASC-ASL)	Not Applicable: Not a Stand-alone Certificate
§233.6	Bilingual Education Supplemental: Arabic	164 Bilingual Education Supplemental TExES and American Council for the Teaching of Foreign Languages (ACTFL) 614 Oral Proficiency Interview (OPI) – Arabic and 615 Writing Proficiency Test (WPT) – Arabic	Not Applicable: Not a Stand-alone Certificate

Certificate TAC Reference	Certificate Name	Required Content Test(s)	Pedagogy and Professional Responsibilities (PPR) Requirements
Bilingual Education (continued)			
§233.6	Bilingual Education Supplemental: Chinese	164 Bilingual Education Supplemental TExES and ACTFL 618 OPI – Chinese (Mandarin) and 619 WPT – Chinese (Mandarin)	Not Applicable: Not a Stand-alone Certificate
§233.6	Bilingual Education Supplemental: Japanese	164 Bilingual Education Supplemental TExES and ACTFL 616 OPI – Japanese and 617 WPT – Japanese	Not Applicable: Not a Stand-alone Certificate
§233.6	Bilingual Education Supplemental: Vietnamese	164 Bilingual Education Supplemental TExES and ACTFL 620 OPI – Vietnamese and 621 WPT – Vietnamese	Not Applicable: Not a Stand-alone Certificate
Computer Science and Technology Applications			
§233.5	Computer Science: Grades 8-12	141 Computer Science 8-12 TExES	160 PPR EC-12 TExES
§233.5	Technology Applications: Early Childhood-Grade 12	142 Technology Applications EC-12 TExES	160 PPR EC-12 TExES
§233.5	Technology Applications: Grades 8-12	139 Technology Applications 8-12 TExES	160 PPR EC-12 TExES
Counselor			
§239.20	School Counselor: Prekindergarten-Grade 12	152 School Counselor EC-12 TExES	Not Applicable: Not an Initial Certificate
Dance			
§233.10	Dance: Grades 8-12	179 Dance 8-12 TExES	160 PPR EC-12 TExES
Educational Diagnostician			
§239.84	Educational Diagnostician: Early Childhood-Grade 12	153 Educational Diagnostician EC-12 TExES	Not Applicable: Not an Initial Certificate

Certificate TAC Reference	Certificate Name	Required Content Test(s)	Pedagogy and Professional Responsibilities (PPR) Requirements
English Language Arts and Reading			
§233.3	English Language Arts and Reading: Grades 4-8	117 English Language Arts and Reading 4-8 TExES	160 PPR EC-12 TExES
§233.3	English Language Arts and Reading: Grades 7-12	231 English Language Arts and Reading 7-12 TExES	160 PPR EC-12 TExES
§233.3	English Language Arts and Reading/Social Studies: Grades 4-8	113 English Language Arts and Reading/ Social Studies 4-8 TExES	160 PPR EC-12 TExES
§239.93	Reading Specialist: Prekindergarten-Grade 12	151 Reading Specialist EC-12 TExES	Not Applicable: Not an Initial Certificate
English as a Second Language			
§233.7	English as a Second Language Generalist: Early Childhood-Grade 6	193 English as a Second Language Generalist EC-6 TExES	160 PPR EC-12 TExES
§233.7	English as a Second Language Generalist: Grades 4-8	120 English as a Second Language Generalist 4-8 TExES	160 PPR EC-12 TExES
§233.7	English as a Second Language Supplemental	154 English as a Second Language Supplemental TExES	Not Applicable: Not a Stand-alone Certificate
Generalist			
§233.2	Generalist: Early Childhood-Grade 6	191 Generalist EC-6 TExES	160 PPR EC-12 TExES
§233.2	Generalist: Grades 4-8	111 Generalist 4-8 TExES	160 PPR EC-12 TExES
§233.2	Core Subjects: Early Childhood-Grade 6	291 Core Subjects EC-6 TExES	160 PPR EC-12 TExES
§233.2	Core Subjects: Grades 4-8	211 Core Subjects 4-8 TExES	160 PPR EC-12 TExES
Gifted and Talented			
§233.9	Gifted and Talented Supplemental	162 Gifted and Talented TExES	Not Applicable: Not a Stand-alone Certificate
Health			
§233.11	Health: Early Childhood-Grade 12	157 Health Education EC-12 TExES	160 PPR EC-12 TExES

Certificate TAC Reference	Certificate Name	Required Content Test(s)	Pedagogy and Professional Responsibilities (PPR) Requirements
Journalism			
§233.3	Journalism: Grades 8-12	156 Journalism 8-12 TExES	160 PPR EC-12 TExES
§233.3	Journalism: Grades 7-12	256 Journalism 7-12 TExES	160 PPR EC-12 TExES
Languages Other Than English			
§233.15	American Sign Language: Early Childhood-Grade 12	184 ASL EC-12 TExES and 073 TASC-ASL	160 PPR EC-12 TExES
§233.15	Arabic: Early Childhood-Grade 12	ACTFL 605 OPI – Arabic and 600 WPT – Arabic	160 PPR EC-12 TExES
§233.15	Chinese: Early Childhood-Grade 12	ACTFL 606 OPI – Chinese (Mandarin) and 601 WPT – Chinese (Mandarin)	160 PPR EC-12 TExES
§233.15	French: Early Childhood-Grade 12	610 Languages Other Than English (LOTE) French EC-12 TExES	160 PPR EC-12 TExES
§233.15	German: Early Childhood-Grade 12	611 LOTE German EC-12 TExES	160 PPR EC-12 TExES
§233.15	Hindi: Early Childhood-Grade 12	ACTFL 622 OPI – Hindu and 623 WPT – Hindu	160 PPR EC-12 TExES
§233.15	Italian: Early Childhood-Grade 12	ACTFL 624 OPI – Italian and 625 WPT – Italian	160 PPR EC-12 TExES
§233.15	Japanese: Early Childhood-Grade 12	ACTFL 607 OPI – Japanese and 602 WPT – Japanese	160 PPR EC-12 TExES
§233.15	Latin: Early Childhood-Grade 12	612 LOTE Latin EC-12 TExES	160 PPR EC-12 TExES
§233.15	Russian: Early Childhood-Grade 12	ACTFL 608 OPI – Russian and 603 WPT – Russian	160 PPR EC-12 TExES
§233.15	Spanish: Early Childhood-Grade 12	613 LOTE Spanish EC-12 TExES	160 PPR EC-12 TExES
§233.15	Turkish: Early Childhood-Grade 12	ACTFL 626 OPI – Turkish and 627 WPT – Turkish	160 PPR EC-12 TExES
§233.15	Vietnamese: Early Childhood-Grade 12	ACTFL 609 OPI – Vietnamese and 604 WPT – Vietnamese	160 PPR EC-12 TExES

Certificate TAC Reference	Certificate Name	Required Content Test(s)	Pedagogy and Professional Responsibilities (PPR) Requirements
Librarian			
§239.60	School Librarian: Prekindergarten-Grade 12	150 School Librarian EC-12 TExES	Not Applicable: Not an Initial Certificate
Master Teacher			
§239.102	Master Mathematics Teacher Certificate: Early Childhood-Grade 4	087 Master Mathematics Teacher EC-4 Texas Examinations for Master Teachers (TExMaT)	Not Applicable: Not an Initial Certificate
§239.102	Master Mathematics Teacher Certificate: Grades 4-8	088 Master Mathematics Teacher 4-8 TExMaT	Not Applicable: Not an Initial Certificate
§239.102	Master Mathematics Teacher Certificate: Grades 8-12	089 Master Mathematics Teacher 8-12 TExMaT	Not Applicable: Not an Initial Certificate
§239.101	Master Reading Teacher Certificate: Prekindergarten-Grade 12	085 Master Reading Teacher EC-12 TExMaT	Not Applicable: Not an Initial Certificate
§239.103	Master Technology Teacher Certificate	086 Master Technology Teacher EC-12 TExMaT	Not Applicable: Not an Initial Certificate
§239.104	Master Science Teacher Certificate: Early Childhood-Grade 4	090 Master Science Teacher EC-4 TExMaT	Not Applicable: Not an Initial Certificate
§239.104	Master Science Teacher Certificate: Grades 4-8	091 Master Science Teacher 4-8 TExMaT	Not Applicable: Not an Initial Certificate
§239.104	Master Science Teacher Certificate: Grades 8-12	092 Master Science Teacher 8-12 TExMaT	Not Applicable: Not an Initial Certificate
Mathematics and Science			
§233.4	Mathematics: Grades 4-8	115 Mathematics 4-8 TExES	160 PPR EC-12 TExES
§233.4	Science: Grades 4-8	116 Science 4-8 TExES	160 PPR EC-12 TExES
§233.4	Mathematics/Science: Grades 4-8	114 Mathematics/ Science 4-8 TExES	160 PPR EC-12 TExES
§233.4	Mathematics: Grades 7-12	235 Mathematics 7-12 TExES	160 PPR EC-12 TExES
§233.4	Science: Grades 7-12	236 Science 7-12 TExES	160 PPR EC-12 TExES
§233.4	Life Science: Grades 7-12	238 Life Science 7-12 TExES	160 PPR EC-12 TExES

Certificate TAC Reference	Certificate Name	Required Content Test(s)	Pedagogy and Professional Responsibilities (PPR) Requirements
Mathematics and Science (continued)			
§233.4	Physical Science: Grades 6-12	237 Physical Science 6-12 TExES	160 PPR EC-12 TExES
§233.4	Physics/Mathematics: Grades 8-12	143 Physics/ Mathematics 8-12 TExES	160 PPR EC-12 TExES
§233.4	Physics/Mathematics: Grades 7-12	243 Physics/ Mathematics 7-12 TExES	160 PPR EC-12 TExES
§233.4	Mathematics/Physical Science/Engineering: Grades 8-12	174 Mathematics/ Physical Science/ Engineering 8-12 TExES	160 PPR EC-12 TExES
§233.4	Mathematics/Physical Science/Engineering: Grades 6-12	274 Mathematics/ Physical Science/ Engineering 6-12 TExES	160 PPR EC-12 TExES
§233.4	Chemistry: Grades 7-12	240 Chemistry 7-12 TExES	160 PPR EC-12 TExES
Music			
§233.10	Music: Early Childhood-Grade 12	177 Music EC-12 TExES	160 PPR EC-12 TExES
Physical Education			
§233.12	Physical Education: Early Childhood-Grade 12	158 Physical Education EC-12 TExES	160 PPR EC-12 TExES
Principal and Superintendent			
§241.20	Principal Certificate	068 Principal TExES	Not Applicable: Not an Initial Certificate
§242.20	Superintendent Certificate	195 Superintendent TExES	Not Applicable: Not an Initial Certificate
Social Studies			
§233.3	Social Studies: Grades 4-8	118 Social Studies 4-8 TExES	160 PPR EC-12 TExES
§233.3	Social Studies: Grades 7-12	232 Social Studies 7-12 TExES	160 PPR EC-12 TExES
§233.3	History: Grades 7-12	233 History 7-12 TExES	160 PPR EC-12 TExES
Speech Communications			
§233.3	Speech: Grades 7-12	129 Speech 7-12 TExES	160 PPR EC-12 TExES

Certificate TAC Reference	Certificate Name	Required Content Test(s)	Pedagogy and Professional Responsibilities (PPR) Requirements
Special Education			
§233.8	Special Education: Early Childhood-Grade 12	161 Special Education EC-12 TExES	160 PPR EC-12 TExES
§233.8	Special Education Supplemental	163 Special Education Supplemental TExES	Not Applicable: Not a Stand-alone Certificate
§233.8	Teacher of the Deaf and Hard of Hearing: Early Childhood-Grade 12	181 Deaf and Hard of Hearing EC-12 TExES and 072 TASC or 073 TASC-ASL (required for assignment but not for certification)	160 PPR EC-12 TExES
§233.8	Teacher of Students with Visual Impairments Supplemental: Early Childhood-Grade 12	182 Visually Impaired TExES and 183 Braille TExES	Not Applicable: Not a Stand-alone Certificate
Theatre			
§233.10	Theatre: Early Childhood-Grade 12	180 Theatre EC-12 TExES	160 PPR EC-12 TExES
Career and Technical Education			
§233.13	Technology Education: Grades 6-12	171 Technology Education 6-12 TExES	160 PPR EC-12 TExES
§233.13	Family and Consumer Sciences, Composite: Grades 6-12	American Association of Family and Consumer Sciences (AAFCS) 200 Family and Consumer Sciences – Composite Examination	160 PPR EC-12 TExES
§233.13	Human Development and Family Studies: Grades 8-12	AAFCS 202 Human Development and Family Studies Concentration Examination	160 PPR EC-12 TExES
§233.13	Hospitality, Nutrition, and Food Sciences: Grades 8-12	AAFCS 201 Hospitality, Nutrition, and Food Science Concentration Examination	160 PPR EC-12 TExES
§233.13	Agricultural Science and Technology: Grades 6-12	172 Agricultural Science and Technology 6-12 TExES	160 PPR EC-12 TExES

Certificate TAC Reference	Certificate Name	Required Content Test(s)	Pedagogy and Professional Responsibilities (PPR) Requirements
Career and Technical Education (continued)			
§233.13	Agriculture, Food, and Natural Resources: Grades 6-12	272 Agriculture, Food, and Natural Resources 6-12 TExES	160 PPR EC-12 TExES
§233.13	Business Education: Grades 6-12	176 Business Education 6-12 TExES	160 PPR EC-12 TExES
§233.13	Business and Finance: Grades 6-12	276 Business and Finance 6-12 TExES	160 PPR EC-12 TExES
§233.14	Marketing Education: Grades 8-12	175 Marketing Education 8-12 TExES	160 PPR EC-12 TExES
§233.14	Marketing: Grades 6-12	275 Marketing 6-12 TExES	160 PPR EC-12 TExES
§233.14	Health Science Technology Education: Grades 8-12	173 Health Science Technology Education 8-12 TExES	160 PPR EC-12 TExES
§233.14	Health Science: Grades 6-12	273 Health Science 6-12 TExES	160 PPR EC-12 TExES
§233.14	Trade and Industrial Education: Grades 8-12	Not Applicable	170 Pedagogy and Professional Responsibilities for Trade and Industrial Education 8-12 TExES
§233.14	Trade and Industrial Education: Grades 6-12	Not Applicable	270 Pedagogy and Professional Responsibilities for Trade and Industrial Education 6-12 TExES

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, 303.008, 303.009, 304.003, and 346.101, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/07/15 - 03/13/16 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/07/15 - 03/13/16 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005 and §303.009[3] for the period of 03/01/16 - 03/31/16 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The monthly ceiling as prescribed by §303.005 and §303.009 for the period of 03/01/16 - 03/01/16 is 18% for Commercial over $250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 04/01/16 - 06/30/16 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 04/01/16 - 06/30/16 is 18% for Commercial over $250,000.

The retail credit card quarterly rate as prescribed by §303.009[1] for the period of 04/01/16 - 06/30/16 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The lender credit card quarterly rate as prescribed by §346.101[1] for the period of 04/01/16 - 06/30/16 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The standard annual rate as prescribed by §303.008 and §303.009[4] for the period of 04/01/16 - 06/30/16 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The standard annual rate as prescribed by §303.008 and §303.009 for the period of 04/01/16 - 06/30/16 is 18% for Commercial over $250,000.

The retail credit card annual rate as prescribed by §303.009[1] for the period of 04/01/16 - 06/30/16 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 03/01/16 - 03/31/16 is 5.00% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed §304.003 for the period of 03/01/16 - 03/31/16 is 5.00% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

[3] For variable rate commercial transactions only.

[4] Only for open-end credit as defined in §301.002(14), Texas Finance Code.

TRD-201601036
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: March 1, 2016

♦ ♦ ♦

Employees Retirement System of Texas

Contract Award Announcement

This contract award notice is being submitted by the Employees Retirement System of Texas with regard to a contract awarded to provide health savings account administrative services for Participants under the Texas Employees Group Benefits Program ("Contract"). The Contract was awarded to:

United HealthCare Services, Inc.

9900 Bren Road East

Minnetonka, Minnesota 55343

The cost of the Contract is estimated to be $90,000. The Contract was executed on February 25, 2016, and will be for a term pursuant to the terms and conditions in the governing contract.

TRD-201600945
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Filed: February 26, 2016

♦ ♦ ♦

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is April 11, 2016. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on April 11, 2016. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Aqua Operations, Incorporated; DOCKET NUMBER: 2015-1658-WOC-E; IDENTIFIER: RN104897772; LOCATION: Austin, Travis County; TYPE OF FACILITY: water operations company; RULES VIOLATED: 30 TAC §30.5(a) and §30.381(b) and TWC, §37.003 and Texas Health and Safety Code, §341.034(b), by failing to obtain a valid water system operator's registration prior to performing process control duties in the production or distribution of public drinking water; PENALTY: $678; ENFORCEMENT COORDINATOR: John Duncan, (512) 239-2720; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(2) COMPANY: Calvin A. Moseley, Jr.; DOCKET NUMBER: 2016-0116-WR-E; IDENTIFIER: RN108868415; LOCATION: Fredericksburg, Gillespie County; TYPE OF FACILITY: property; RULES VIOLATED: TWC, §11.081 and §11.121, by impounding, diverting, or using state water without a permit; PENALTY: $350; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2015-1664-AIR-E; IDENTIFIER: RN103919817; LOCATION: Baytown, Harris County; TYPE OF FACILITY: petrochemical plant; RULES VIOLATED: 30 TAC §116.115(c), New Source Review Permit Numbers 37063 and N178, Special Conditions Number 1, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $13,125; ENFORCEMENT COORDINATOR: Kingsley Coppinger, (512) 239-6581; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Chuck Bell Water Systems, LLC dba Crowley II Acre Subdivision; DOCKET NUMBER: 2015-1758-PWS-E; IDENTIFIER: RN102679842; LOCATION: Crowley, Johnson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.20 milligrams per liter of free chlorine throughout the distribution system at all times; PENALTY: $305; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: City of Big Wells; DOCKET NUMBER: 2015-1853-PWS-E; IDENTIFIER: RN101389385; LOCATION: Big Wells, Dimmit County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(n)(1), by failing to maintain plans, specifications, maps, and other pertinent information to facilitate the operation and maintenance of the system's facilities and equipment; 30 TAC §290.121(a) and (b), by failing to maintain a complete and up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; 30 TAC §290.46(f)(2) and (3)(A)(ii)(II), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director upon request; and 30 TAC §21.4 and TWC, §5.702, by failing to pay Consolidated Water Quality fees and associated late fees for TCEQ Financial Administration Account Number 23004470 for Fiscal Year 2016; PENALTY: $150; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(6) COMPANY: City of Charlotte; DOCKET NUMBER: 2015-0892-MWD-E; IDENTIFIER: RN101721033; LOCATION: Charlotte, Atascosa County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010142001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; and 30 TAC §305.125(1) and TPDES Permit Number WQ0010142001, Sludge Provisions, by failing to submit the annual sludge report for the monitoring period ending July 31, 2014, by September 1, 2014; PENALTY: $42,525; Supplemental Environmental Project offset amount of $34,020; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (512) 239-2601; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(7) COMPANY: City of Haskell; DOCKET NUMBER: 2015-1443-MWD-E; IDENTIFIER: RN102076866; LOCATION: Haskell, Haskell County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(1) and (17) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010728001, Sludge Provisions, by failing to submit the annual sludge report for the monitoring period ending July 31, 2014; and 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0010728001, Other Requirements Number 6.d., by failing to submit the annual soil monitoring results for the monitoring period ending August 31, 2014; PENALTY: $3,300; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(8) COMPANY: City of Mertzon; DOCKET NUMBER: 2015-1840-MSW-E; IDENTIFIER: RN108426719; LOCATION: Mertzon, Irion County; TYPE OF FACILITY: unauthorized waste disposal site; RULE VIOLATED: 30 TAC §330.15(c), by failing to not cause, suffer, allow, or permit the unauthorized disposal of municipal solid waste; PENALTY: $1,312; ENFORCEMENT COORDINATOR: Holly Kneisley, (817) 588-5856; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(9) COMPANY: City of Normangee; DOCKET NUMBER: 2014-1751-MWD-E; IDENTIFIER: RN101916385; LOCATION: Normangee, Leon County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0014787001, Effluent Limitations and Monitoring Requirements Number 1, 2a., and 6, by failing to comply with permitted effluent limitations; PENALTY: $13,125; ENFORCEMENT COORDINATOR: Christopher Bost, (512) 239-4575; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(10) COMPANY: Conatser Construction TX, LP; DOCKET NUMBER: 2016-0222-WQ-E; IDENTIFIER: RN108882481; LOCATION: Granbury, Hood County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Construction General Permit; PENALTY: $875; ENFORCEMENT

COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Cornerstone Organization, LLC; DOCKET NUMBER: 2015-1600-AIR-E; IDENTIFIER: RN108187329; LOCATION: Grand Prairie, Tarrant County; TYPE OF FACILITY: portable rock crusher; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to construction and operation of a portable rock crusher; PENALTY: $938; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Edanbra Development, L.C.; DOCKET NUMBER: 2016-0244-WQ-E; IDENTIFIER: RN108926403; LOCATION: Temple, Bell County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: $875; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(13) COMPANY: G AND S LAKESIDE LEASING, LLC; DOCKET NUMBER: 2015-1295-WQ-E; IDENTIFIER: RN106539695; LOCATION: Canyon, Randall County; TYPE OF FACILITY: aggregate production operation (APO); RULE VIOLATED: 30 TAC §342.25(d), by failing to renew the APO registration annually as regulated activities continued; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (512) 239-2601; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(14) COMPANY: HAMEEDA INVESTMENTS INCORPORATED dba Peachtree Food and Beer Wine; DOCKET NUMBER: 2015-1540-PST-E; IDENTIFIER: RN102223435; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the underground storage tanks (USTs); and 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; PENALTY: $4,662; ENFORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: Husefa Ali; DOCKET NUMBER: 2016-0187-WQ-E; IDENTIFIER: RN105591820; LOCATION: Goodrich, Polk County; TYPE OF FACILITY: recycling plant; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Multi-Sector General Permit; PENALTY: $875; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(16) COMPANY: Jake R. Williams; DOCKET NUMBER: 2016-0093-WOC-E; IDENTIFIER: RN105012199; LOCATION: Lewisville, Denton County; TYPE OF FACILITY: residence; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: KWIKIE GROCERY, INCORPORATED dba Kwikie 2; DOCKET NUMBER: 2015-1615-PST-E; IDENTIFIER: RN102366697; LOCATION: Big Spring, Howard County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; PENALTY: $3,034; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (432) 570-1359.

(18) COMPANY: Landmark Residential Development, Limited; DOCKET NUMBER: 2015-1850-WQ-E; IDENTIFIER: RN105969406; LOCATION: Victoria, Victoria County; TYPE OF FACILITY: construction site; RULES VIOLATED: TWC, §26.121(a) and Texas Pollutant Discharge Elimination System General Permit Number TXR15XW87, Part III, Section F(2)(c)(i)(B), by failing to install best management practices designed to minimize pollutants in stormwater associated with construction activity; PENALTY: $1,000; ENFORCEMENT COORDINATOR: Austin Henck, (512) 239-6155; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(19) COMPANY: Larry Rambo dba Rambo Trucking; DOCKET NUMBER: 2015-1727-WQ-E; IDENTIFIER: RN106836323; LOCATION: Mansfield, Tarrant County; TYPE OF FACILITY: aggregate production operation (APO); RULE VIOLATED: 30 TAC §342.25(d), by failing to renew the APO registration annually as regulated activities continued; PENALTY: $10,000; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: NEW NGC, INCORPORATED; DOCKET NUMBER: 2015-1691-WQ-E; IDENTIFIER: RN105937403; LOCATION: Harper, Kimble County; TYPE OF FACILITY: aggregate production operation (APO); RULE VIOLATED: 30 TAC §342.25(d), by failing to renew the APO registration annually as regulated activities continued; PENALTY: $10,000; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (512) 239-2601; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(21) COMPANY: NuStar Logistics, L.P.; DOCKET NUMBER: 2016-0188-WQ-E; IDENTIFIER: RN107821043; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Multi-Sector General Permit; PENALTY: $875; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(22) COMPANY: Oscar G. Franco; DOCKET NUMBER: 2016-0098-WOC-E; IDENTIFIER: RN107595035; LOCATION: Beeville, Bee County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(23) COMPANY: PHILLIPS 66 COMPANY; DOCKET NUMBER: 2015-1716-MLM-E; IDENTIFIER: RN102495884; LOCATION: Borger, Hutchinson County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §335.2(b), by failing to not cause, suffer, allow, or permit the unauthorized disposal of industrial solid waste and hazardous waste; and 30 TAC §331.63(e), 40 Code of Federal Regulations §146.67(c), and Underground Injection Control Permit Number WDW 325, Permit Provision VII.F., by failing to

maintain the annulus pressure at least 100 pounds per square inch greater than the injection tubing pressure to prevent leaks from the well into unauthorized zones and to detect well malfunctions; PENALTY: $26,250; Supplemental Environmental Project offset amount of $10,500; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(24) COMPANY: Rafael Ayala; DOCKET NUMBER: 2015-1143-IHW-E; IDENTIFIER: RN108301300; LOCATION: Princeton, Collin County; TYPE OF FACILITY: unauthorized industrial hazardous waste site; RULE VIOLATED: 30 TAC §335.4, by failing to not cause, suffer, allow, or permit the unauthorized disposal of industrial solid waste and hazardous waste; PENALTY: $18,750; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(25) COMPANY: Targa Midstream Services LLC; DOCKET NUMBER: 2015-1559-AIR-E; IDENTIFIER: RN100238716; LOCATION: Chico, Wise County; TYPE OF FACILITY: natural gas production plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), Texas Health and Safety Code (THSC), §382.085(b), Federal Operating Permit (FOP) Number O3181, Special Terms and Conditions Number 12, and New Source Review Permit Number 84108, Special Conditions Number 8.C, by failing to comply with the operating temperature limit for the Regenerative Thermal Oxidizer; and 30 TAC §122.145(2)(A), THSC, §382.085(b), and FOP Number O3181, General Terms and Conditions, by failing to report all instances of deviations; PENALTY: $14,298; Supplemental Environmental Project offset amount of $5,719; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(26) COMPANY: The Dow Chemical Company; DOCKET NUMBER: 2015-1242-AIR-E; IDENTIFIER: RN100225945; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: chemical plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), Texas Health and Safety Code (THSC), §382.085(b), Federal Operating Permit (FOP) Number O2217, Special Terms and Conditions (STC) Number 16, and New Source Review (NSR) Permit Number 22072, Special Conditions (SC) Number 1, by failing to prevent unauthorized emissions; and 30 TAC §§101.20(3), 116.115(c), and 122.143(4), THSC, §382.085(b), FOP Number O2213, STC Number 21, and NSR Permit Numbers 20432 and PSDTX994M1, SC Number 1, by failing to prevent unauthorized emissions; PENALTY: $15,188; Supplemental Environmental Project offset amount of $6,075; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(27) COMPANY: Troy Vines, Incorporated; DOCKET NUMBER: 2016-0221-WQ-E; IDENTIFIER: RN104448501; LOCATION: Big Spring, Howard County; TYPE OF FACILITY: concrete plant; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Multi-Sector General Permit; PENALTY: $875; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (432) 570-1359.

(28) COMPANY: Tubb Quarry, LLC; DOCKET NUMBER: 2015-1634-AIR-E; IDENTIFIER: RN108743261; LOCATION: Stamford, Haskell County; TYPE OF FACILITY: portable rock crusher; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing and operating a rock crusher; PENALTY: $938; ENFORCEMENT COORDINATOR: Kingsley Coppinger, (512) 239-6581; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(29) COMPANY: Vernor Material and Equipment Company, Incorporated; DOCKET NUMBER: 2015-1762-WQ-E; IDENTIFIER: RN102855871; LOCATION: Oyster Creek, Brazoria County; TYPE OF FACILITY: aggregate production operation (APO) and construction sand and gravel operation; RULES VIOLATED: 30 TAC §342.25(d), by failing to renew the APO registration annually for the site as regulated activities continued; 30 TAC §319.7(c) and Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXR05BC05, Part III, Section B, Number 5(b) and Section D, Numbers 1(c) and 5, and Part IV, Section B, Number 2(c), by failing to maintain written records of the annual comprehensive site compliance inspections, benchmark monitoring, and rainfall monitoring data; and 30 TAC §319.11(c) and TPDES General Permit Number TXR05BC05, Part III, Section E, Number 4(b), by failing to comply with specified test methods; PENALTY: $6,413; Supplemental Environmental Project offset amount of $2,565; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(30) COMPANY: WALNUT GROVE WATER SUPPLY CORPORATION; DOCKET NUMBER: 2015-1743-PWS-E; IDENTIFIER: RN101191849; LOCATION: Whitehouse, Smith County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(f)(1)(A) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level for microbial contaminants for the month of October 2015; and 30 TAC §290.117(i)(6) and (j), by failing to timely mail consumer notification of lead tap water monitoring results to persons served at the locations that were sampled and failing to timely submit to the TCEQ a copy of the consumer notification and certification that the consumer notification has been distributed to persons served at the locations that were sampled in a manner consistent with TCEQ requirements for the sites that were tested from June 1, 2013 - September 1, 2013; PENALTY: $1,150; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(31) COMPANY: William L. Leighton; DOCKET NUMBER: 2016-0099-WOC-E; IDENTIFIER: RN106278559; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: landscape irrigation services; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(32) COMPANY: Wolf Hollow I Power, LLC; DOCKET NUMBER: 2015-1292-AIR-E; IDENTIFIER: RN100219195; LOCATION: Granbury, Hood County; TYPE OF FACILITY: power generation plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O2066, Special Terms and Conditions Number 5, and New Source Review Permit Numbers 41166 and PSDTX939, Special Conditions Number 1, by failing to comply with the annual allowable carbon monoxide emissions rate for the Combustion Turbines, Emissions Point Number E-ST1 and E-ST2; PENALTY: $96,600; ENFORCEMENT COORDINATOR: Eduardo Heras, (512) 239-2422; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201601029

Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: March 1, 2016

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Enforcement Orders

An agreed order was entered regarding Alan McGuire, Docket No. 2014-1752-OSI-E on February 22, 2016 assessing $1,317 in administrative penalties with $263 deferred. Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2520, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gustavo De Aquino Martinez and Guadalupe Mendoza, Docket No. 2015-0495-MSW-E on February 22, 2016 assessing $1,250 in administrative penalties with $250 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TRI COUNTY POINT PROPERTY OWNERS ASSOCIATION, Docket No. 2015-0655-PWS-E on February 22, 2016 assessing $150 in administrative penalties with $30 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2571, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MJ JUNG, INC. dba Langley Super Mart, Docket No. 2015-0887-PST-E on February 22, 2016 assessing $4,375 in administrative penalties with $875 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MEZGER ENTERPRISES, LTD., Docket No. 2015-1018-WQ-E on February 22, 2016 assessing $5,000 in administrative penalties with $1,000 deferred. Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2520, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gurpuri, Inc. dba Diamond Super Mart 2, Docket No. 2015-1095-PST-E on February 22, 2016 assessing $7,000 in administrative penalties with $1,400 deferred. Information concerning any aspect of this order may be obtained by contacting Tiffany Maurer, Enforcement Coordinator at (512) 239-2696, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ronnie Emberton, Docket No. 2015-1164-WQ-E on February 22, 2016 assessing $3,188 in administrative penalties with $637 deferred. Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NOCONA HILLS OWNERS ASSOCIATION, Docket No. 2015-1197-MLM-E on February 22, 2016 assessing $2,000 in administrative penalties with $400 deferred. Information concerning any aspect of this order may be obtained by contacting Holly Kneisley, Enforcement Coordinator at (817) 588-5856, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kirby Stone Company, LLC, Docket No. 2015-1265-WQ-E on February 22, 2016 assessing $5,000 in administrative penalties with $1,000 deferred. Information concerning any aspect of this order may be obtained by contacting Christopher Bost, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CROUCH SAND & GRAVEL, INC., Docket No. 2015-1278-WQ-E on February 22, 2016 assessing $5,000 in administrative penalties with $1,000 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2601, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EBELING WATER SUPPLY CORPORATION, Docket No. 2015-1328-PWS-E on February 22, 2016 assessing $50 in administrative penalties with $10 deferred. Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CHRISTIAN TABERNACLE OF HOUSTON, INC., Docket No. 2015-1331-PWS-E on February 22, 2016 assessing $1,275 in administrative penalties with $255 deferred. Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Richland Springs, Docket No. 2015-1359-MWD-E on February 22, 2016 assessing $2,250 in administrative penalties with $450 deferred. Information concerning any aspect of this order may be obtained by contacting Christopher Bost, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Domingo Robles dba Shallowater Truck Stop, Docket No. 2015-1369-PWS-E on February 22, 2016 assessing $251 in administrative penalties with $50 deferred. Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EVERETT SQUARE INC., Docket No. 2015-1372-PWS-E on February 22, 2016 assessing $100 in administrative penalties with $20 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2571, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding K H Jung Investment, Inc. dba Times Market 35, Docket No. 2015-1375-PST-E on February 22, 2016 assessing $7,126 in administrative penalties with $1,425 deferred. Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Enervest Operating, L.L.C., Docket No. 2015-1379-AIR-E on February 22, 2016 assessing $3,563 in administrative penalties with $712 deferred. Information concerning any aspect of this order may be obtained by contacting Eduardo Heras,

Enforcement Coordinator at (512) 239-2422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Gregory, Docket No. 2015-1400-PWS-E on February 22, 2016 assessing $167 in administrative penalties with $33 deferred. Information concerning any aspect of this order may be obtained by contacting Holly Kneisley, Enforcement Coordinator at (817) 588-5856, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WESSON SAND COMPANY, INC., Docket No. 2015-1404-WQ-E on February 22, 2016 assessing $5,000 in administrative penalties with $1,000 deferred. Information concerning any aspect of this order may be obtained by contacting Farhaud Abbaszadeh, Enforcement Coordinator at (512) 239-0779, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HPP Materials, Inc., Docket No. 2015-1425-WQ-E on February 22, 2016 assessing $5,000 in administrative penalties with $1,000 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2601, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aqua Utilities, Inc., Docket No. 2015-1462-PWS-E on February 22, 2016 assessing $1,171 in administrative penalties with $234 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Beaumont, Docket No. 2015-1468-PWS-E on February 22, 2016 assessing $450 in administrative penalties with $90 deferred. Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BRACKEN CHRISTIAN SCHOOL OF BULVERDE, Docket No. 2015-1521-PWS-E on February 22, 2016 assessing $1,950 in administrative penalties with $390 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Clyde, Docket No. 2015-1535-PWS-E on February 22, 2016 assessing $270 in administrative penalties with $54 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (817) 588-5892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Austin Western Railroad, L.L.C., Docket No. 2015-1558-MSW-E on February 22, 2016 assessing $1,250 in administrative penalties with $250 deferred. Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Ismael Badillo, Docket No. 2015-1782-WOC-E on February 22, 2016 assessing $175 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201601059
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 2, 2016

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Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility Registration Application Number 40287

Application. The Gainsborough Corporation, 5207 Kiam Street, Houston, Texas 77007, has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40287, to construct and operate a Type V municipal solid waste transfer station. The proposed facility, Gainsborough Waste (GW) Transfer Station will be located at 950 McCarty Street, approximately 2,600 feet south of Interstate Highway 10, 77029, in Harris County. The Applicant is requesting authorization to transfer, process, and recycle non-putrescible municipal solid waste which includes construction and demolition debris and rubbish from municipal and commercial activities, which will be processed for recyclable materials. The registration application is available for viewing and copying at the Pleasantville Library, 1520 Gellhorn Drive, Houston, Texas 77029, and may be viewed online at www.earthcon.com/statepermits.html. The following website which provides an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.769965&lng=-95.28893&zoom=12&type=r. For exact location, refer to application.

Public Comment/Public Meeting. Written public comments or written requests for a public meeting must be submitted to the Office of Chief Clerk at the address included in the information section below. If a public meeting is held, comments may be made orally at the meeting or submitted in writing by the close of the public meeting. A public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the development is to be located, or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The executive director will review and consider public comments and written requests for a public meeting submitted during the comment period. The comment period shall begin on the date this notice is published and end 60 calendar days after this notice is published. The comment period shall be extended to the close of any public meeting. The executive director is not required to file a response to comments.

Executive Director Action. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to overturn the executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk. Written public comments or requests to be placed on the permanent mailing list for this application should be submitted to the Office of the Chief Clerk mail code MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 or electronically submitted to

http://www10.tceq.texas.gov/epic/ecmnts/. If you choose to communicate with the TCEQ electronically, please be aware that your e-mail address, like your physical mailing address, will become part of the agency's public record. For information about this application or the registration process, individual members of the general public may call the TCEQ Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Further information may also be obtained from Gainsborough Corporation at the address stated above or by calling Mr. W. Noble Carl, III, President, The Gainsborough Corporation at (713) 785-8051.

TRD-201601056
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 2, 2016

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Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility Registration Application Number 40288

Application. Med-Turn, Inc., 4332 Empire Road, Fort Worth, Texas 76155, has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40288, to construct and operate a Type V municipal solid waste Medical Waste Transfer Station. The proposed facility, Med-Turn will be located approximately 6 miles south of Dallas Fort Worth Airport; 76155, in Tarrant County. The Applicant is requesting authorization to process and store, transfer, and recycle municipal solid waste which includes medical waste; non-hazardous pharmaceutical waste; and source separated recyclable items from health care providers. The registration application is available for viewing and copying at the West Irving Library, 4444 West Rochelle Road, Irving, Texas 75062 and may be viewed online at http://www.wh-m.com/project/wm-submits-a-msw-type-v-medical-waste-transfer-station-registration-applications/. The following website which provides an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: https://www.tceq.texas.gov/assets/public/hb610/index.html?lat=32.8263&lng=-97.0373&zoom=13&type=r. For exact location, refer to application.

Public Comment/Public Meeting. Written public comments or written requests for a public meeting must be submitted to the Office of the Chief Clerk at the address included in the information section below. If a public meeting is held, comments may be made orally at the meeting or submitted in writing by the close of the public meeting. A public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the development is to be located, or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The executive director will review and consider public comments and written requests for a public meeting submitted during the comment period. The comment period shall begin on the date this notice is published and end 60 calendar days after this notice is published. The comment period shall be extended to the close of any public meeting. The executive director is not required to file a response to comments.

Executive Director Action. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to overturn the executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

Information. Written public comments or requests to be placed on the permanent mailing list for this application should be submitted to the Office of the Chief Clerk mail code MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically submitted to http://www10.tceq.texas.gov/epic/ecmnts/. If you choose to communicate with the TCEQ electronically, please be aware that your e-mail address, like your physical mailing address, will become part of the agency's public record. For information about this application or the registration process, individual members of the general public may call the TCEQ Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Further information may also be obtained from Med-Turn, Inc. at the address stated above or by calling Mr. Emile C. Hanna, P.E. at (713) 491-2629.

TRD-201601057
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 2, 2016

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Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Proposed Air Quality Registration Number 138512

APPLICATION. Ranger Ready Mix, LLC, P.O. Box 82541, Austin, Texas 78708-2541 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 138512 to authorize the operation of a permanent concrete batch plant. The facility is proposed to be located west of Georgetown, Williamson County, Texas 78633. The following driving directions were provided: from the intersection of Farm-to-Market Road 263 and Ronald Reagan Boulevard travel north 0.85 mile to entrance of site located on west side of road. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=30.717222&lng=-97.846111&zoom=13&type=r. This application was submitted to the TCEQ on January 29, 2016. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on February 8, 2016.

PUBLIC COMMENT / PUBLIC HEARING. Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at www.tceq.texas.gov/about/comments.html. If you choose to communicate with the TCEQ electronically, please be aware that

your email address, like your physical mailing address, will become part of the agency's public record.

A public hearing has been scheduled, that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. **Written comments about this application may also be submitted at any time during the hearing.** The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. **The public hearing is not an evidentiary proceeding.**

The Public Hearing is to be held:

Tuesday, March 29, 2016, at 6:00 p.m.

Holiday Inn Express

431 North Interstate 35

Georgetown, Texas 78628

RESPONSE TO COMMENTS. A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

CENTRAL/REGIONAL OFFICE. The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Austin Regional Office, located at 12100 Park 35 Circle Bldg. A Room 179, Austin, Texas 78753-1808, during the hours of 8:00 am to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Ranger Ready Mix, LLC, P.O. Box 82541, Austin, Texas 78708-2541, or by calling Ms. Monique Wells, Environmental Consultant, CIC Environmental LLC at (512) 292-4314.

Notice Issuance Date: February 17, 2016

TRD-201600920
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 24, 2016

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Notice of Correction to Agreed Order Number 14

In the February 5, 2016, issue of the *Texas Register* (41 TexReg 1002), the Texas Commission on Environmental Quality published notice of Agreed Orders, specifically item Number 14, for KIA ENTERPRISES, INCORPORATED dba Iffi Stop 1 Food Mart. The reference to company should be corrected to read: KIA ENTERPRISES, INCORPORATED dba Iffi Stop 1 Food Market.

For questions concerning this error, please contact Candy Garrett at (512) 239-1456.

TRD-201601030
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: March 1, 2016

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Notice of Hearing

Quinton Logeman

SOAH Docket No. 582-16-1675

TCEQ Docket No. 2015-1783-LIC

APPLICATION.

Quinton Logeman, Riverside-Allendale Apartments, 2006 North Sylvania Avenue, Apartment C, Fort Worth, Texas 76111, has applied with the Texas Commission on Environmental Quality (TCEQ) for renewal of a Landscape Irrigator License. The Executive Director denied Mr. Logeman's application for cause. Mr. Logeman has requested a formal hearing on the Executive Director's decision.

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a formal contested case hearing on this application at:

10:00 a.m. - March 9, 2016

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The hearing will be a legal proceeding similar to a civil trial in state district court to determine whether Mr. Logeman should be issued a Landscape Irrigator License. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **If Quinton Logeman fails to appear at the preliminary hearing or evidentiary hearing, the Executive Director's factual allegations will be deemed admitted as true, and Mr. Logeman's application for a Landscape Irrigator License will be denied.**

Legal Authority: Texas Water Code Chapters 5 and 37; Texas Government Code, Chapter 2001; 30 Texas Administrative Code (TAC) Chapter 30, and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapters 70 and 80 and 1 TAC Chapter 155.

INFORMATION.

For information concerning the hearing process, please contact the TCEQ Office of Public Interest Counsel, MC 103, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6363. Further information regarding this hearing may be obtained by contacting Alicia Ramirez, Staff Attorney, TCEQ, Environmental Law Division, MC 173, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0133. General information about the TCEQ can be found at our web site at http://www.tceq.texas.gov/.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at http://www.tceq.texas.gov/goto/eFilings or sent to the following

address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week prior to the hearing.

Issued: February 17, 2016

TRD-201600926
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 24, 2016

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

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 11, 2016.** TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 11, 2016.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: 3DR LLC d/b/a Shell Food Mart; DOCKET NUMBER: 2015-1134-PST-E; TCEQ ID NUMBER: RN102923208; LOCATION: 4110 Business Highway 287J, Iowa Park, Wichita County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $4,631; STAFF ATTORNEY: Audrey Liter, Litigation Division, MC 175, (512) 239-0684; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(2) COMPANY: A & H American, Inc d/b/a Citgo Food Store; DOCKET NUMBER: 2015-1346-PST-E; TCEQ ID NUMBER: RN102058195; LOCATION: 1223 East Pioneer Parkway, Arlington, Tarrant County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $2,568; STAFF ATTORNEY: Audrey Liter, Litigation Division, MC 175, (512) 239-0684; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: ADAWN USA INC d/b/a Sajna; DOCKET NUMBER: 2015-1110-PST-E; TCEQ ID NUMBER: RN101865764; LOCATION: 7060 Bellfort Street, Houston, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(A) and (b)(2), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and by failing to provide release detection for the pressurized piping associated with the UST system by failing to conduct the annual piping tightness and line leak detector tests; PENALTY: $3,504; STAFF ATTORNEY: David A. Terry, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: Bennie Len Gallier; DOCKET NUMBER: 2015-1111-MSW-E; TCEQ ID NUMBER: RN106538929; LOCATION: 8539 South Terry Road, Orange, Orange County; TYPE OF FACILITY: unauthorized waste disposal site; RULE VIOLATED: 30 TAC §330.15(c) and TCEQ Agreed Order Docket Number 2013-1850-MSW-E, Ordering Provision Number 2.b., by causing, suffering, allowing, or permitting the unauthorized disposal of municipal solid waste; PENALTY: $9,000; STAFF ATTORNEY: David A. Terry, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(5) COMPANY: Elvan Investments Corporation d/b/a Hawks Pantry 4; DOCKET NUMBER: 2015-1067-PST-E; TCEQ ID NUMBER: RN102349974; LOCATION: 5017 Fall Creek Highway, Granbury, Hood County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,375; STAFF ATTORNEY: Amanda Patel, Litigation Division, MC 175, (512) 239-3990; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: George Pierson; DOCKET NUMBER: 2015-0235-MSW-E; TCEQ ID NUMBER: RN107554925; LOCATION: 413 Chest Street, Grapeland, Houston County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal; RULE VIOLATED: 30 TAC §330.15(c), by causing, suffering, allowing, or permitting the unauthorized disposal of MSW; PENALTY: $1,312; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(7) COMPANY: Noltex L.L.C.; DOCKET NUMBER: 2015-0097-AIR-E; TCEQ ID NUMBER: RN101049518; LOCATION: 12220 Strang Road, La Porte, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: Texas Health and Safety Code, §382.085(b), 30 TAC §116.115(b)(2)(F) and (c), and §122.143(4), Federal Operating Permit Number O1301, Special Terms and Conditions Number 11, and New Source Review Permit Number 19074, Special Conditions Number 1, by failing to prevent unauthorized emissions; PENALTY: $102,000; Supplemental Environment Project (SEP) offset amount of 51,000 applied to the Houston-Galveston Area Council-AERCO for the Clean Vehicles Partnership Project; STAFF ATTORNEY: David A. Terry, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201601045
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: March 1, 2016

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 11, 2016.** The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 11, 2016.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: AFEEF Investments Inc.; DOCKET NUMBER: 2014-1865-PST-E; TCEQ ID NUMBER: RN101763621; LOCATION: 6090 Montgomery, Windcrest, Bexar County; TYPE OF FACILITY: underground storage tank (UST) system; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); TWC, §26.3475(d) and 30 TAC §334.49(a)(2), by failing to ensure that a corrosion protection system is designed, installed, operated, and maintained in a manner that will ensure continuous corrosion protection to all metal components of the UST system; and 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum UST; PENALTY: $9,618; STAFF ATTORNEY: J. Amber Ahmed, Litigation Division, MC 175, (512) 239-1204; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Jessica Waggoner Cronin; DOCKET NUMBER: 2015-1214-MSW-E; TCEQ ID NUMBER: RN107944365; LOCATION: 3603 River Road, Cedar Creek, Travis County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULE VIOLATED: 30 TAC §330.15(c), by causing, suffering, allowing, or permitting the unauthorized disposal of MSW; PENALTY: $1,312; STAFF ATTORNEY: Elizabeth Lieberknecht, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

TRD-201601047
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: March 1, 2016

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Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of Austin 512, LLC

SOAH Docket No. 582-16-2496

TCEQ Docket No. 2015-0891-MWD-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - March 24, 2016

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed December 28, 2015 concerning assessing administrative penalties against Austin 512, LLC, for violations in Lee County, Texas, of: Tex. Water Code §26.121(a)(1).

The hearing will allow Austin 512, LLC, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Austin 512, LLC, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an

evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of Austin 512, LLC to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** Austin 512, LLC, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054 and chs. 7 and 26 and 30 Tex. Admin Code chs. 70 and 305; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Tex. Admin. Code §70.108 and §70.109 and ch. 80, and 1 Tex. Admin. Code ch. 155.

Further information regarding this hearing may be obtained by contacting Elizabeth Harkrider, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at http://www.tceq.texas.gov/goto/eFilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: February 19, 2016

TRD-201600921

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 24, 2016

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Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of City of Joaquin

SOAH Docket No. 582-16-2531

TCEQ Docket No. 2015-1223-MWD-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - March 31, 2016

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed November 18, 2015 concerning assessing administrative penalties against and requiring certain actions of City of Joaquin, for violations in Shelby County, Texas, of: Texas Water Code §26.039(b) and §26.121(a)(1), 30 Texas Administrative Code §305.125(1), (5), and (9)(A), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0012718001, Permit Conditions No. 2.g., and Monitoring and Reporting Requirements Nos. 7.a. and 7.b.

The hearing will allow City of Joaquin, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford City of Joaquin, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. Upon failure of **City of Joaquin** to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes. City of Joaquin, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Water Code §7.054 and Texas Water Code §7.002; Texas Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Ryan Rutledge, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at *http://www.tceq.texas.gov/goto/eFilings* or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: February 18, 2016

TRD-201600922

Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 24, 2016

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Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of James Tracy Howard

SOAH Docket No. 582-16-2410

TCEQ Docket No. 2014-1682-PWS-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - March 24, 2016

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed December 2, 2015 concerning assessing administrative penalties against and requiring certain actions of James Tracy Howard, for violations in Chambers County, Texas, of: Texas Health and Safety Code §341.0315(c) and 30 Texas Administrative Code §290.41(c)(3)(n) and §290.45(b)(1)(C)(ii) and (iii).

The hearing will allow James Tracy Howard, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford James Tracy Howard, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. Upon failure of **James Tracy Howard** to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes. James Tracy Howard, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Water Code §7.054 and Texas Health and Safety Code ch. 341 and 30 Texas Administrative Code chs. 70 and 30 Texas Administrative Code ch. 290; Texas Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Jake Marx, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at *http://www.tceq.texas.gov/goto/eFilings* or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: February 19, 2016

TRD-201600923
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 24, 2016

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Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of Lakeshore Utility Company

SOAH Docket No. 582-16-2351

TCEQ Docket No. 2014-1469-PWS-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - March 10, 2016

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed July 16, 2015 concerning assessing administrative penalties against and requiring certain actions of LAKESHORE UTILITY COMPANY, for violations in Henderson County, Texas, of: 30 Texas Administrative Code §§290.109(c)(4)(B); 290.110(e)(4)(A) and (f)(3); 290.117(c)(2)(B), (c)(2)(C), (c)(2)(D), and (i)(1); 290.122(c)(2)(A) and (f); 290.271(b); and 290.274(a) and (c).

The hearing will allow LAKESHORE UTILITY COMPANY, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford LAKESHORE UTILITY COMPANY, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. Upon failure of **LAKESHORE UTILITY COMPANY** to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The

specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes. LAKESHORE UTILITY COMPANY, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Health and Safety Code ch. 341 and 30 Texas Administrative Code chs. 70 and 290; Texas Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Jacquelyn Boutwell, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at *http://www.tceq.texas.gov/goto/eFilings* or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: February 8, 2016

TRD-201600924
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 24, 2016

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Notice of Public Hearing

On Assessment of Administrative Penalties and Requiring Certain Actions of Legacy Metals LLC

SOAH Docket No. 582-16-2518

TCEQ Docket No. 2015-0298-IHW-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - March 31, 2016

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed July 14, 2015 concerning assessing administrative penalties against and requiring certain actions of Legacy Metals LLC, for violations in Liberty County, Texas, of: 30 Tex. Admin Code §335.4.

The hearing will allow Legacy Metals LLC, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Legacy Metals LLC, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of Legacy Metals LLC to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** Legacy Metals LLC, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054, Tex. Water Code ch. 7, Tex. Health & Safety Code ch. 361, and 30 Tex. Admin. Code Chs. 70 and 335; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Tex. Admin. Code §§70.108 and 70.109 and ch. 80, and 1 Tex. Admin. Code ch. 155.

Further information regarding this hearing may be obtained by contacting Elizabeth Harkrider, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at http://www.tceq.texas.gov/goto/eFilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: February 18, 2016

TRD-201600925
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 24, 2016

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Notice of Public Hearing

On Assessment of Administrative Penalties and Requiring Certain Actions of Ranger Utility Company

SOAH Docket No. 582-16-2178

TCEQ Docket No. 2015-1033-PWS-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - March 3, 2016

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed December 1, 2015 concerning assessing administrative penalties against and requiring certain actions of RANGER UTILITY COMPANY, for violations in Waller County, Texas, of: Tex. Health & Safety Code §341.0315(c), 30 Tex. Admin. Code §§290.45(b)(1)(C)(ii) and (iii), and TCEQ Agreed Order, Docket No. 2011-1171-PWS-E, Ordering Provisions Nos. 2.a.i and 2.a.ii.

The hearing will allow RANGER UTILITY COMPANY, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford RANGER UTILITY COMPANY, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of RANGER UTILITY COMPANY to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** RANGER UTILITY COMPANY, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Health & Safety Code ch. 341 and 30 Tex. Admin. Code chs. 70 and 290; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Tex. Admin. Code §§70.108 and 70.109 and ch. 80, and 1 Tex. Admin. Code ch. 155.

Further information regarding this hearing may be obtained by contacting Elizabeth Harkrider, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at http://www.tceq.texas.gov/goto/eFilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: February 2, 2016

TRD-201600927
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 24, 2016

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Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of Thomas H. Stone

SOAH Docket No. 582-16-2495

TCEQ Docket No. 2015-1027-MSW-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - March 24, 2016

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's First Amended Report and Petition mailed December 23, 2015 concerning assessing administrative penalties against and requiring certain actions of Thomas H. Stone for violations in Archer County, Texas, of: 30 Texas Administrative Code §330.15(c) and TCEQ Agreed Order Docket No. 2012-0214-MLM-E, Ordering Provision No. 2.b.

The hearing will allow Thomas H. Stone, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Thomas H. Stone, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. Upon failure of **Thomas H. Stone** to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's First Amended Report and Petition, attached hereto and incorporated herein for all purposes. Thomas H. Stone, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Water Code §7.054 and ch. 7, Texas Health and Safety Code ch. 361, and 30 Texas Administrative Code chs. 70 and

330; Texas Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Ryan Rutledge, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at *http://www.tceq.texas.gov/goto/eFilings* or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: February 19, 2016

TRD-201600928
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 24, 2016

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Notice of Public Meeting for TPDES Permit for Municipal Wastewater New Permit Number WQ0015360001

APPLICATION. Green Valley Special Utility District, P.O. Box 99, Marion, Texas 78124, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015360001, to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 5,000,000 gallons per day.

The facility will be located at 3930 Linne Road, Seguin, in Guadalupe County, Texas 78155. The treated effluent will be discharged to Santa Clara Creek; thence to Lower Cibolo Creek in Segment No. 1902 of the Guadalupe River Basin. The unclassified receiving water use is high aquatic life use for Santa Clara Creek. The designated uses for Segment No. 1902 are high aquatic life use and primary contact recreation. In accordance with 30 Texas Administrative Code Section 307.5 and the TCEQ implementation procedures (June 2010) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Santa Clara Creek, which has been identified as having high aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.

http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.5253&lng=-98.114166&zoom=13&type=r

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

PUBLIC COMMENT / PUBLIC MEETING. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Tuesday, March 29, 2016 at 7:00 PM

McQueeney Lions Club

3211 FM 78

McQueeney, Texas 78123

INFORMATION. Citizens are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at www.tceq.texas.gov/about/comments.html. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. *Si desea información en español, puede llamar (800) 687-4040.* General information about the TCEQ can be found at our web site at www.tceq.texas.gov.

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Marion City Hall, 303 South Center Street, Marion, in Guadalupe County, Texas. Further information may also be obtained from Green Valley Special Utility District at the address stated above or by calling Mr. Pat Allen at (830) 914-2330.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least one week prior to the meeting.

Issued: February 16, 2016

TRD-201600919

Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 24, 2016

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Notice of Water Quality Applications

The following notices were issued on February 19, 2016 through February 25, 2016.

The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 WITHIN (30) DAYS OF THE ISSUED DATE OF THE NOTICE.

INFORMATION SECTION

Braskem America Inc which operates the La Porte Facility, a plastics manufacturing plant which produces polypropylene homopolymer and copolymer (ethylene and propylene), has applied for a minor amendment without renewal to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0002107000 to clarify the testing requirements for chlorine residual at internal Outfall 101. The existing permit authorizes the discharge of treated effluent consisting of process wastewater, domestic sewage, utility wastewater, process area stormwater, and non-process area stormwater at a daily average flow not to exceed 622,000 gallons per day via Outfall 001; domestic sewage on an intermittent and flow-variable basis via Outfall 101; non-process area stormwater on an intermittent and flow-variable basis via Outfall 002; and process area stormwater and non-process area stormwater on an intermittent and flow-variable basis via Outfall 003. The facility is located at 8811 Strang Road, approximately 1,000 feet east of the intersection of Strang Road and State Highway 225, and approximately 3.5 miles northwest of the City of La Porte, in Harris County, Texas 77571.

City of Austin has applied for a minor amendment to TPDES Permit No. WQ0010543014 to reduce the permitted flows in the interim phases. The facility is located approximately three miles east of Farm-to-Market Road 973, approximately one mile north of Farm-to-Market Road 969 and approximately 1.7 miles west of Burleson Road in Travis, County, Texas 78653.

Fort Bend County Municipal Utility District No 133 has applied to the Texas Commission on Environmental Quality for a minor amendment to TPDES Permit No. WQ0014514001 to authorize the addition of an Interim II phase at a daily average flow not to exceed 640,000 gallons per day. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,360,000 gallons per day. The facility is located 23527 1/2 Bellaire Boulevard, approximately 3,300 feet southwest of the intersection of Canal Road and Bellaire Boulevard and approximately 6,000 feet southwest of the intersection of Farm-to-Market Road 1093 and Canal Road in Fort Bend, County, Texas 77469.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

Issued in Austin, Texas on March 1, 2016.

TRD-201601058

Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 2, 2016

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Request for Scopes of Work for Natural Resource Restoration Projects in Northeast and East Texas

The Texas Natural Resource Trustees, comprising of the Texas Commission on Environmental Quality, Texas Parks & Wildlife Department, Texas General Land Office, and U.S. Fish and Wildlife Service on behalf of the U.S. Department of the Interior (the Trustees), are seeking scopes of work on projects that will restore, rehabilitate, or conserve forested riparian, bottomland hardwoods, aquatic, and/or wetland habitats in portions of northeast and east Texas.

The Trustees have recovered approximately $21 million through a legal settlement of natural resource damages associated with releases of hazardous substances at or from the former Kerr-McGee Chemical Corporation wood treatment facility (the Facility) in Texarkana, Bowie County, Texas. The releases of polycyclic aromatic hydrocarbons, pentachlorophenol, and arsenic to surface soils and shallow groundwater at the Facility and to the sediments of Waggoner, Days, and Howard Creeks resulted in injury and losses of ecological services to the sediments, benthic organisms, and associated aquatic biota in these systems.

Under Section 107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 United States Code, §9607(f), the settlement funds may only be used to restore, rehabilitate, replace, or acquire the equivalent of the natural resources injured as a result of these releases. In this case, the Trustees are seeking scopes of work on potential projects that will provide direct and significant ecological benefits to forested riparian, bottomland hardwoods, aquatic, and/or wetland habitats within the following counties: Anderson, Angelina, Bowie, Camp, Cass, Cherokee, Delta, Franklin, Gregg, Hardin, Harrison, Henderson, Hopkins, Houston, Jasper, Lamar, Marion, Morris, Nacogdoches, Newton, Panola, Polk, Rains, Red River, Rusk, Sabine, San Augustine, Shelby, Smith, Titus, Trinity, Tyler, Upshur, Van Zandt, and Woods.

In particular, the Trustees are seeking projects that: provide direct ecological benefits to forested riparian, bottomland hardwoods, aquatic, and/or wetland habitats in the identified geographic area; are technically feasible; deliver benefits cost-effectively; have a reasonable probability of success; provide measurable results; avoid collateral injury to natural resources; do not adversely impact human health and safety, and are compatible with the remediation process; are consistent with federal, state, or local laws, regulations, or policies; and are not already required by existing laws, regulations, permits, settlements, or enforcement orders, including anticipated requirements such as mitigation requirements of draft permits unrelated to this request for scopes of work.

In addition, restoration activities must have the potential to be protected in perpetuity for conservation purposes by a legal mechanism such as a conservation easement.

The Trustees will review submitted project ideas and may request further, detailed proposals for inclusion as restoration alternatives in a draft Restoration Plan that will be developed pursuant to 43 Code of Federal Regulations §11.81. This draft Restoration Plan, which is subject to a 30-day public review and comment period, will describe how the Trustees will use the settlement funds to restore, rehabilitate, replace, or acquire the equivalent of the natural resources injured as a result of the releases at the Facility. Projects submitted in response to

this request may require modification to fit the requirements and needs of the Trustees prior to inclusion into the Restoration Plan or implementation.

Project information must be submitted to Michael Smith of the Texas Commission on Environmental Quality via email at michael.smith@tceq.texas.gov or by mail at MC-136, P.O. Box 13087, Austin, Texas 78711-3087 by May 6, 2016. Submissions to the Trustees will be considered a matter of public record and releasable under the Texas Public Information Act and the federal Freedom of Information Act. Submissions should include the following information to the extent known:

1. Project title

2. Project location (including GPS centerpoint)

3. Estimated project costs and budget (as detailed as possible)

4. Additional funding sources (anticipated source and amount, if applicable)

5. Proposed project implementation period

6. Status of project engineering and design, including permitting requirements

7. Project lead agency/organization

8. Partner organizations (if applicable)

9. Brief narrative including a detailed project description, including: types of project activities to be completed (i.e., construction, preservation, etc.); natural resources and acreages that will benefit from the project; and lifespan of the project.

TRD-201600944
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: February 26, 2016

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Texas Facilities Commission

Request for Proposals #303-6-20550

The Texas Facilities Commission (TFC), on behalf of the Department of Public Safety (DPS) announces the issuance of Request for Proposals (RFP) #303-6-20550. TFC seeks a five (5) or ten (10) year lease of approximately 14,635 square feet of usable space that consists of 14,440 square feet of office space and 195 square feet of outdoor employee lounge area square feet of office space in Georgetown, Texas.

The deadline for questions is March 24, 2016 and the deadline for proposals is April 6, 2016, at 3:00 p.m. The award date is May 18, 2016. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=123088.*

TRD-201601063
Kay Molina
General Counsel
Texas Facilities Commission
Filed: March 2, 2016

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Request for Proposals #303-7-20551

The Texas Facilities Commission (TFC), on behalf of the Department of Public Safety (DPS), announces the issuance of Request for Proposals (RFP) #303-7-20551. TFC seeks a five (5) or ten (10) year lease of approximately 2,982 square feet of usable space that consists of 2,787 square feet of office space and 195 square feet of outdoor employee lounge area space in Jacksonville, Texas.

The deadline for questions is March 28, 2016 and the deadline for proposals is April 11, 2016 at 3:00 p.m. The award date is May 18, 2016. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=123064.*

TRD-201601043
Kay Molina
General Counsel
Texas Facilities Commission
Filed: March 1, 2016

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Department of Family and Protective Services

Correction of Error

The Department of Family and Protective Services adopted the repeal of 40 TAC §§745.9060, 745.9061, 745.9063, 745.9065, 745.9067, 745.9068, 745.9069 - 745.9071, 745.9073, 745.9075, 745.9077, 745.9079, 745.9081, 745.9083, 745.9085, 745.9087, 745.9089, 745.9090, 745.9091 -745.9097, and 745.9100, concerning Independent Court-Ordered Social Studies; and new 40 TAC §§745.9041, 745.9043, 745.9045, 745.9047, 745.9049, 745.9051, 745.9053, 745.9055, 745.9057, 745.9059, 745.9061, 745.9063, 745.9065, 745.9067, 745.9069, 745.9071, 745.9073, 745.9075, 745.9077, 745.9079, 745.9081, 745.9083, 745.9085, 745.9087, 745.9089, 745.9091, 745.9093, 745.9095, 745.9097, and 745.9098, concerning Independent Court-Ordered Adoption Evaluations, in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1489). Due to a Texas Register staff error, the effective date of the repeals and new rules is incorrectly shown to be February 29, 2016. The correct effective date for the rulemaking actions is March 1, 2016.

The incorrect effective dates appear on pages 1490 through 1493, following TRD numbers 201600600, 201600602, 201600603, 201600604, 201600606, 201600609, 201600610, 201600611, 201600612, 201600613, and 201600614. The Texas Administrative Code has been corrected to reflect the effective date of March 1, 2016.

TRD-201601073

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Invitation for Offers for Consultant Contract

In accordance with Texas Government Code, Chapter 2254, the Health and Human Services Commission (HHSC), on behalf of the Department of Family and Protective Services (DFPS), announces this notice of invitation for offers for a consultant contract for the purposes of performing implementation activities related to the DFPS Transformation Initiative.

Consulting services related to the DFPS Transformation Initiative have been provided previously by The Stephen Group and DFPS intends to award this contract to The Stephen Group unless DFPS receives a better offer.

The statement of work for this contract includes prioritization of the work, structure, and management of Transformation Initiative recommendations, providing subject matter expertise in operationalizing implementation strategies, and monitoring all work to verify the Transformation Initiative schedule is met and the benefits achieved for the DFPS Child Protective Services (CPS) Division. Interested parties can find out more about the DFPS Transformation Initiative at the following website:

https://www.dfps.state.tx.us/child_protection/About_Child_Protective_Services/transformation/default.asp

DFPS will evaluate any offers received based on the competence, knowledge, and qualifications of the consultant, in addition to the reasonableness of the proposed fee for services. DFPS reserves the right to accept or reject any or all offers. The closing date for receipt of offers of these consulting services is 5:00 p.m., March 28, 2016.

For the submission of offers or any additional information concerning this Invitation, please contact: Heather Bugg, Project Manager, at (512) 438-4206 or email Heather.Bugg@dfps.state.tx.us.

Issued in Austin, Texas on February 26, 2016.

TRD-201600958
Trevor Woodruff
General Counsel
Department of Family and Protective Services
Filed: February 26, 2016

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Golden Crescent Workforce Development Board

Request for Quotes for Labor Market/Economic Analysis Tool

The Golden Crescent Workforce Development Board (Board) is soliciting proposals from qualified organizations and/or individuals to provide assessor services to current Texas Rising Stars (TRS) providers and to child care providers who may be seeking TRS certification in the Golden Crescent Area. Request for Qualifications (RFQ) # PY15-RFQ-0001 may be requested in writing or picked up in person on and after 10:00 AM CST, Monday, March 16, 2015, at the Board offices located at 120 S. Main, Suite 120, Victoria, Texas 79901. To request a copy of the RFQ, please call (361) 576-5872 or e-mail to *josetroncoso@gcworkforce.org*.

No Proposer's Conference will be held for this procurement because this is an open procurement. However, questions may be submitted to *josetroncoso@gcworkforce.org* on or before Monday March 23, 2015 and every Monday thereafter. All questions and answers will be posted on the Board's website.

Responses to this RFQ for the first Month of services must be physically received by the Procurement Manager at the Board Offices no later than 5:00 PM CST, March 27, 2015.

Workforce Solutions Golden Crescent is an Equal Opportunity Employer/Program. Auxiliary aids are available upon request to individuals with disabilities. Relay Texas: Telecommunication Device for the Deaf (TDD).

TRD-201601024
Henry Guajardo
Executive Director
Golden Crescent Workforce Development Board
Filed: February 29, 2016

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Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rates for Peer Support in the Home and Community-Based Services Adult Mental Health Program (HCBS-AMH)

The proposed rates will be effective April 15, 2016.

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on March 31, 2016, at 9:30 a.m. to receive public comment on proposed payment rates for Peer Support in the (HCBS-AMH) program operated by the Texas Department of State Health Services (DSHS).

The hearing will be held in compliance with Texas Human Resources Code §32.0282 (relating to public hearing on rates) and 1 Texas Administrative Code (TAC) §355.201 (relating to establishment and adjustment of reimbursement rates by HHSC),which require public notice of and hearings on proposed Medicaid reimbursements. The public hearing will be held in the Public Hearing Room in the Brown Heatly Building, 4900 North Lamar Boulevard, Austin, Texas, with entrance through Security. Entry is through the front of the building facing Lamar Boulevard. Free parking is available in front of the building and in the adjacent parking garage. Persons requiring Americans with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact Rate Analysis by calling (512) 730-7401 at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. HHSC proposes to amend the rate for Peer Support to reflect the salaries of the staff providing the service, to be effective April 15, 2016.

Methodology and Justification. HHSC calculated the proposed payment rates in accordance with the rate setting methodologies codified in 1 TAC §355.9070 (relating to reimbursement methodology for the Home and Community-Based Services - Adult Mental Health Program).

Briefing Package. On March 11, 2016, a briefing package describing the proposed payment rates will be available at http://www.hhsc.state.tx.us/rad/rate-packets.shtml. Interested parties may also obtain a free copy of the briefing package by contacting the HHSC Rate Analysis department by U.S. mail addressed to Health and Human Services Commission, Rate Analysis Department, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at *RAD_Operations@hhsc.state.tx.us*. In addition, free copies of the briefing package will be available at the public hearing. The briefing package will contain a description of the specific rate adjustments that are proposed.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or email.

U.S. Mail:

Health and Human Services Commission

Rate Analysis Department, Mail Code H-400

P.O. Box 149030

Austin, Texas 78714-9030

Overnight mail, special delivery mail or hand delivery:

Health and Human Services Commission

Rate Analysis Department, Mail Code H-400

4900 North Lamar Blvd.

Austin, Texas 78751

Phone number for package delivery: 512-730-7401

Fax:

Attention: Kyle Baxter at 512-730-7475

E-mail:

RAD_Operations@hhsc.state.tx.us

TRD-201601061
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: March 2, 2016

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Public Notice: Amendment to Reimbursement Methodology for Program for All-Inclusive Care for the Elderly (PACE)

The Texas Health and Human Services Commission announces its intent to submit transmittal number 16-0006 to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The purpose of this amendment is first to align the State Plan language with the shift from a fee-for-service payment system to a managed care payment system. The amendment will thus adjust the underlying methodology and the data sources for determining Program for All Inclusive Care for the Elderly (PACE) reimbursement. Second, the proposed language implements new requirements for reimbursement methodology set out in House Bill 3823, 84th Texas Legislature, Regular Session, which is codified at Texas Human Resources Code §§32.0532 through 32.0534. The proposed amendment is effective March 1, 2017.

The methodology is being adjusted as a result of the shift from using fee-for-service data to using primarily managed care data. Such a shift in the data will result in a lower level of reimbursement for the PACE sites, and, as an offset to this change, the methodology is being adjusted from using a reduction factor no greater than 0.95, to using a reduction factor which is less than 1.0.

Other changes to the methodology include those required by House Bill 3823. The new law requires that reimbursement rates for providers under the program are adequate to sustain the program; and that the program is cost-neutral or costs less when compared to the cost to serve a population in the STAR + PLUS Medicaid managed care program that is comparable in age; and eligibility factors, including income level, health status, and impairment level; geographic location; living environment; and other factors HHSC determines to be necessary.

The proposed amendment is estimated to have no fiscal impact. An adjustment in the reimbursement methodology to reduce the savings factor applied is expected to minimize the effects of the movement to managed care data. Additionally, the provisions set out in House Bill 3823 could cause reimbursement to increase for some PACE sites, but to decrease for others. The net effect is unknown but is expected to be close to $0.00.

To obtain copies of the proposed amendment, interested parties may contact J.R. Top, State Plan Coordinator, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 462-6397; by facsimile at (512) 730-7472; or by e-mail at *jr.top@hhsc.state.tx.us*. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201601062
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: March 2, 2016

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Public Notice - Waiver Amendment to the Youth Empowerment Services (YES) Program

The Texas Health and Human Services Commission (HHSC) is submitting to the Centers for Medicare and Medicaid Services (CMS) a request for an amendment to the YES waiver program, a waiver implemented under the authority of §1915(c) of the Social Security Act. The Centers for Medicare and Medicaid Services has approved this waiver through March 31, 2018. The proposed effective date for the amendment is July 10, 2016, with no changes to cost neutrality.

This amendment request proposes to make the following changes:

1. Main - Expand the population of children and adolescents served through the Youth Empowerment Services (YES) Waiver to include children and adolescents who are in conservatorship of the state.

2. Appendix B - Remove the limitation on the number of participants served at any point in time during the waiver year.

3. Appendix B - Add a reserved waiver capacity group. The reserve capacity group will reserve slots for children and adolescents who are at imminent risk of relinquishment to the state.

4. Appendix B and Appendix J - Increase the maximum number of unduplicated count of participants (Factor C) for waiver years 4 and 5.

5. Appendix J - Update estimate of Factor D for waiver years 4 and 5.

The YES waiver program, which the Department of State Health Services (DSHS) operates under HHSC's authority, is designed to provide home and community-based services to children with serious emotional disturbances and their families, with a goal of reducing or preventing children's inpatient psychiatric treatment and the consequent removal from their families. The waiver is currently approved to serve up to 1,300 eligible children who are at least age 3 but under age 19 and who are predicted to remain in the waiver for 12 months.

An individual may obtain a free copy of the proposed waiver amendment, including the YES settings transition plan, or may ask questions, request additional information, or submit comments regarding this amendment or the YES settings transition plan, by contacting Jacqueline Pernell by mail at Texas Health and Human Services Commission, PO Box 13247, Mail Code H-600, Austin, Texas 78711-3247, phone (512) 428-1931, fax (512) 730-7477, or by email at *TX_Medicaid_Waivers@hhsc.state.tx.us*.

In addition, the HHSC local eligibility offices will post this notice for 30 days. The complete waiver amendment request can be found online on the DSHS website at *https://www.dshs.state.tx.us/mhsa/yes/*.

TRD-201601054
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: March 2, 2016

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Texas Higher Education Coordinating Board

Notice of Intent to Engage in Negotiated Rulemaking - Bilingual Education Scholarship Program

House Bill 1, Article III, Section 45 was passed by the 84th Texas Legislature, Regular Session. It provides:

Of the funds appropriated by this Act to the Texas Higher Education Coordinating Board (THECB), the Coordinating Board may use an amount that is not less than $150,000 for each year of the 2016-17 biennium to develop and operate a program at the University of North Texas, University of North Texas at Dallas, Texas Woman's University, University of Texas Dallas, University of Texas Arlington, Texas A&M Commerce and DFW Tech Teach - Texas Tech University, in consultation with the university, to provide financial incentives in the form of tuition assistance, to encourage students who enroll in an educator preparation program at the university to become certified to teach bilingual education, English as a Second Language, or Spanish in school districts with high critical needs.

The program shall make awards to qualified students admitted to the Teacher Education Program in Bilingual Education. Qualified students must: 1) have demonstrated financial need, as determined by the completion of a Free Application for Federal Student Aid form and the Office of Financial Aid and Scholarships; 2) Successfully pass the State Board of Educator Certification Bilingual Target Language Proficiency Test; and 3) Maintain a minimum cumulative 3.0 GPA.

The program shall submit a report not later than January 1, 2017 to the Texas Higher Education Coordinating Board detailing annual information on the following performance measures: Student graduation rates from the program; Passage rates for the Texas Examination of Education Standards Bilingual Education Supplemental exam and/or the English as a Second Language Supplemental exam; and Graduate employment data at Texas public school districts.

The THECB intends to engage in negotiated rulemaking to develop an allocation methodology for the trusteed funds. This is in accordance with the provisions of Texas Education Code §61.0331.

In identifying persons likely affected by the allocation methodology, the Convener of Negotiated Rulemaking sent a memo via email to the presidents at Texas A&M University-Commerce, Texas Tech University (DFW TechTeach Across Texas), Texas Woman's University, The University Texas at Arlington, The University of Texas at Dallas, University of North Texas, and University of North Texas at Dallas, soliciting their interest and willingness to participate in the negotiated rulemaking process, or to nominate a representative from their university.

From this effort 8 individuals responded (out of 8 affected entities) and expressed an interest to participate or nominated someone from their university to participate on the bilingual education scholarship program negotiated rulemaking committee. The positions held by the nominees include directors, chairs, and professors of bilingual/ESL education programs and teacher education programs. This indicates a probable willingness and authority of the affected interests to negotiate in good faith and a reasonable probability that a negotiated rulemaking process can result in a unanimous or, if the committee so chooses, a suitable general consensus on the proposed allocation methodology.

The following is a list of the stakeholders who are significantly affected and will be represented on the bilingual education scholarship program negotiated rulemaking committee:

1. Texas A&M University-Commerce;
2. Texas Tech University (DFW TechTeach Across Texas);
3. Texas Woman's University;
4. The University of Texas at Arlington;
5. The University of Texas at Dallas;
6. University of North Texas;
7. University of North Texas at Dallas; and
8. Texas Higher Education Coordinating Board.

The THECB proposes to appoint the following 8 individuals to the bilingual education scholarship program negotiating rulemaking committee to represent affected parties and the agency:

University

Laura Chris Green, Director, Bilingual/ESL Education Program, Texas A&M University-Commerce

Doug Hamman, Chair, Teacher Education Department, Texas Tech University (DFW TechTeach Across Texas)

Mandy Stewart, Assistant Professor, Bilingual/ESL Education, Texas Woman's University

Luis A. Rosado, Director, Center for Bilingual Education, The University of Texas at Arlington

Renee Davis, Adjunct Professor, The University of Texas at Dallas

Rossana Boyd, Director, Bilingual/ESL Teacher Certification Program, University of North Texas

Marco Shappeck, Assistant Professor, Teacher Education, University of North Texas at Dallas

Texas Higher Education Coordinating Board

Charles Puls, Deputy Assistant Commissioner, Student Financial Aid Programs

Meetings will be open to the public. If there are persons who are significantly affected by the bilingual education scholarship program allocation methodology and are not represented by the persons named above, those persons may apply to the agency for membership on the negotiated rulemaking committee or nominate another person to represent their interests. Application for membership must be made in writing and include the following information:

* Name and contact information of the person submitting the application;

* Description of how the persons are significantly affected by the allocation methodology and how their interests are different than those represented by the persons named above;

* Name and contact information of the person being nominated for membership; and

* Description of the qualifications of the nominee to represent the person's interests.

The THECB requests comments on the Notice of Intent to engage in negotiated rulemaking and on the membership of the bilingual education scholarship program negotiated rulemaking committee. Comments and applications for membership on the committee must be submitted by March 21, 2016, to:

Laurie A. Frederick

Convener, Negotiated Rulemaking

Texas Higher Education Coordinating Board

P.O. Box 12788, Austin, Texas 78711

Fax: (512) 427-6127

E-mail: *Laurie.Frederick@thecb.state.tx.us*

TRD-201601040
William Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: March 1, 2016

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Notice of Intent to Engage in Negotiated Rulemaking - B-On-Time Tuition Set-Asides Reimbursement

House Bill 1, Article IX, Section 18.38 was passed by the 84th Texas Legislature, Regular Session. It provides:

Contingent on enactment of House Bill 700, or similar legislation relating to the elimination of the tuition set aside under Education Code Section 56.465 for the B-On-Time (BOT) Program, by the 84th Legislature, Regular Session, institutions of higher education are hereby appropriated $65,324,057 in unexpended balances as of August 31, 2015, in General Revenue-Dedicated Texas B-On-Time Account 5103.

The THECB intends to engage in negotiated rulemaking to develop an allocation methodology for distributing these funds to the affected institutions. This is in accordance with the provisions of Texas Education Code §61.0331.

In identifying persons likely affected by the allocation methodology, the Convener of Negotiated Rulemaking sent a memo via email to the chancellors at Texas A&M University System, Texas State University System, Texas Tech University System, The University of Texas System, University of Houston System, and University of North Texas System; and the presidents at Midwestern State University, Stephen F. Austin State University, Texas Southern University, and Texas Woman's University, soliciting their interest and willingness to participate in the negotiated rulemaking process, or to nominate a representative from their system/university.

From this effort 11 individuals responded (out of 11 affected entities) and expressed an interest to participate or nominated someone from their system/university to participate on the BOT tuition set-asides reimbursement negotiated rulemaking committee. The positions held by the nominees include vice presidents, directors, and assistant directors of financial aid; vice presidents for administration, finance, and enrollment services; and directors and assistant directors of financial aid. This indicates a probable willingness and authority of the affected interests to negotiate in good faith and a reasonable probability that a negotiated rulemaking process can result in a unanimous or, if the committee so chooses, a suitable general consensus on the proposed allocation methodology.

The following is a list of the stakeholders who are significantly affected and will be represented on the BOT tuition set-asides reimbursement negotiated rulemaking committee:

1. Midwestern State University;
2. Stephen F. Austin State University;
3. Texas A&M University System;
4. Texas Southern University;
5. Texas State University System;
6. Texas Tech University System;
7. Texas Woman's University;
8. The University of Texas System;
9. University of Houston System;
10. University of North Texas System; and
11. Texas Higher Education Coordinating Board.

The THECB proposes to appoint the following 11 individuals to the BOT tuition set-asides reimbursement negotiating rulemaking committee to represent affected parties and the agency:

System/University

Karen Collins, Assistant Director, Financial Aid, Midwestern State University

Rachele' Garrett, Director, Student Financial Aid, Stephen F. Austin State University

Joseph Duron, Executive Director, Budgets and Accounting, Texas A&M University System

Craig Ness, Vice President, Administration & Finance/CFO, Texas Southern University

Daniel Harper, Deputy Vice Chancellor for Finance, Texas State University System

Noel Sloan, Vice President, Administration and Finance, Texas Tech University System

Gary T. Ray, Vice President, Enrollment Services, Texas Woman's University

M. Beth Tolan, Director, Financial Aid, The University of Texas System

Chris Stanich, Associate Vice Chancellor/Associate Provost, Institutional Planning and Analysis, University of Houston System

Bob Brown, Vice President, Finance and Administration, University of North Texas System

Texas Higher Education Coordinating Board

Charles Puls, Deputy Assistant Commissioner, Student Financial Aid Programs

Meetings will be open to the public. If there are persons who are significantly affected by the BOT tuition set-asides reimbursement allocation methodology and are not represented by the persons named above, those persons may apply to the agency for membership on the negotiated rulemaking committee or nominate another person to represent their interests. Application for membership must be made in writing and include the following information:

* Name and contact information of the person submitting the application;

* Description of how the persons are significantly affected by the allocation methodology and how their interests are different than those represented by the persons named above;

* Name and contact information of the person being nominated for membership; and

* Description of the qualifications of the nominee to represent the person's interests.

The THECB requests comments on the Notice of Intent to engage in negotiated rulemaking and on the membership of the BOT tuition set-asides reimbursement negotiated rulemaking committee. Comments and applications for membership on the committee must be submitted by March 21, 2016 to:

Laurie A. Frederick

Convener, Negotiated Rulemaking

Texas Higher Education Coordinating Board

P.O. Box 12788, Austin, Texas 78711

Fax: (512) 427-6127

Email: *Laurie.Frederick@thecb.state.tx.us*

TRD-201601041
William Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: March 1, 2016

♦ ♦ ♦

Texas Department of Housing and Community Affairs

Announcement of the Public Comment Period for the Draft 2016 State of Texas Consolidated Plan Annual Performance Report - Reporting on Program Year 2015

The Texas Department of Housing and Community Affairs ("Department") announces the opening of a 15-day public comment period for the *State of Texas Draft 2016 Consolidated Plan Annual Performance Report - Reporting on Program Year 2015* ("the Report") as required by the U.S. Department of Housing and Urban Development ("HUD"). The Report is required as part of the overall requirements governing the State's consolidated planning process. The Report is submitted in compliance with 24 CFR 91.520, Consolidated Plan Submissions for Community Planning and Development Programs. The 15-day public comment period begins Friday, March 26, 2016, and continues until 6:00 p.m., Austin local time, on Friday, April 8, 2016.

The Report gives the public an opportunity to evaluate the performance of the past program year for four HUD programs: the Community Development Block Grant Program administered by the Texas Department of Agriculture, the Emergency Shelter Grants and HOME Investment Partnerships programs administered by the Department, and the Housing Opportunities for Persons with AIDS Program administered by the Texas Department of State Health Services. The following information is provided for each of the four programs covered in the Report: a summary of program resources and programmatic accomplishments; a series of narrative statements on program performance over the past year; a qualitative analysis of program actions and experiences; and a discussion of program successes in meeting program goals and objectives.

Beginning March 26, 2016, the Report will be available on the Department's website at www.tdhca.state.tx.us. A hard copy can be requested by contacting the Housing Resource Center at P.O. Box 13941, Austin, Texas 78711-3941 or by calling (512) 475-3976.

Written comment should be sent by mail to the Texas Department of Housing and Community Affairs, Housing Resource Center, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to *info@tdhca.state.tx.us,* or by fax to (512) 475-0700.

TRD-201600957
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: February 26, 2016

♦ ♦ ♦

Aviso de Audiencia Pública sobre el Plan Estatal del Año 2016 del Weatherization Assistance Program - Programa de Asistencia de Climatización

El Departamento de Vivienda y Asuntos Comunitarios de Texas (TDHCA, por sus siglas en ingles) llevará a cabo una audiencia pública para solicitar comentarios sobre el Plan Estatal del año 2016 del Weatherization Assistance Program (WAP, por sus siglas en ingles). La audiencia está programada de la siguiente manera:

Martes, 15 de abril del 2016

1:30 de la tarde

Oficina Central del TDHCA

221 East 11th Street (221 Calle 11 Este)

Sala 116

Austin, Texas 78701

Durante la audiencia, un representante del Departamento recibirá los comentarios respecto al Plan Estatal 2016 del WAP.

Funcionarios locales y personas interesadas están invitados a participar en la audiencia pública. Los comentarios recibidos en forma escrita u oral serán utilizados para finalizar la Aplicación y el Plan Estatal 2016 de WAP. Comentarios escritos de personas que no pueden asistir a la audiencia pública serán recibidos hasta las 10:00 de la mañana del 21 de marzo del 2016, dirigidos a Texas Department of Housing and Community Affairs, Atención: Rita Gonzaeles-Garza, Community Affairs Division, P.O. Box 13941, Austin, Texas 78711 o a través de correo electrónico a *rita.garza@tdhca.state.tx.us.* Puede obtener una copia del Plan Estatal WAP del año 2016 a través del sitio web del TDHCA, *http://www.tdhca.state.tx.us/community-affairs/wap/index.htm,* por teléfono al (512) 475-3905 o por escrito a la dirección postal arriba mencionada.

Personas que necesitan equipos o servicios auxiliares para esta junta deben comunicarse con Gina Esteves, empleada responsable de la Ley sobre Estadounidenses con Discapacidades (ADA, por sus siglas en ingles), al (512) 475-3943 o al Relay Texas al 1-800-662-4954 por lo menos dos días antes de la junta para hacer los preparativos apropiados.

Personas que hablan español y requieren un intérprete, favor de llamar a Elena Peinado al siguiente número (512) 475-3814 o enviar un correo electrónico a *Elena.peinado@tdhca.state.tx.us* por lo menos tres días antes de la junta para hacer los preparativos apropiados.

TRD-201600954
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: February 26, 2016

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Aviso de Junta Pública del Consejo Asesor del Programa de Asistencia de Climatización (Weatherization Assistance Program Policy Advisory Council)

El Comité Asesor del Programa de Asistencia de Climatización del Departamento de Vivienda y Asuntos Comunitarios de Texas (TDHCA,

por sus siglas en ingles) llevará a cabo una reunión pública sobre el Plan preliminar Estatal del año 2016 del Weatherization Assistance Program (WAP, por sus siglas en ingles). La reunión está programada de la siguiente manera:

Lunes, 21 de marzo del 2016

10:30 de la mañana

Oficina Central del TDHCA

221 East 11th Street (221 Calle 11 Este)

Sala 116

Austin, Texas 78701

Funcionarios locales y personas interesadas están invitados a participar en la reunión pública. Puede obtener una copia del Plan preliminar Estatal WAP del año 2016 a través del sitio web del TDHCA, *http://www.tdhca.state.tx.us/community-affairs/wap/index.htm,* por teléfono a Rita Gonzales-Garza al (512) 475-3905 o por escrito a la dirección postal arriba mencionada o por correo electrónico a *rita.garza@tdhca.state.tx.us.*

Personas que necesitan equipos o servicios auxiliares para esta junta deben comunicarse con Gina Esteves, empleada responsable de la Ley sobre Estadounidenses con Discapacidades (ADA, por sus siglas en ingles), al (512) 475-3943 o al Relay Texas al 1-800-662-4954 por lo menos dos días antes de la junta para hacer los preparativos apropiados.

Personas que hablan español y requieren un intérprete, favor de llamar a Elena Peinado al siguiente número (512) 475-3814 o enviar un correo electrónico a *elena.peinado@tdhca.state.tx.us* por lo menos tres días antes de la junta para hacer los preparativos apropiados.

TRD-201600952
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: February 26, 2016

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Notice of Meeting of Weatherization Assistance Program Policy Advisory Committee

The Texas Department of Housing and Community Affairs' ("the Department") Weatherization Assistance Program Policy Advisory Committee ("WAPPAC") will hold a meeting to review and provide input on the Draft PY 2016 Department of Energy ("DOE") Weatherization Assistance Program ("WAP") State Plan. The meeting will take place at the following time and location:

Monday, March 21, 2016

10:30 a.m.

TDHCA Headquarters

221 East 11th Street, Conference Room 116

Austin, Texas 78701

At the meeting, the WAPPAC will review public comments provided on the Draft PY 2016 DOE WAP State Plan and provide recommended revisions to the Plan.

A copy of the Draft PY 2016 DOE WAP State Plan may be obtained through TDHCA's website, *http://www.tdhca.state.tx.us/community-affairs/wap/index.htm,* or by calling Ms. Gonzales-Garza at (512) 475-3905 or sending an e-mail to *rita.garza@tdhca.state.tx.us* or by writing at the TDHCA address provided above.

Individuals who require auxiliary aids, services or sign language interpreters for this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989, at least three (3) days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for this meeting should contact Elena Peinado, (512) 475-3814 or e-mail at *Elena.peinado@tdhca.state.tx.us* at least three (3) days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Elena Peinado al siguiente número (512) 475-3814 o escribir *Elena.peinado@tdhca.state.tx.us* por lo menos tres días antes de la junta para hacer los preparativos apropiados.

TRD-201600951
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: February 26, 2016

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Notice of Public Hearing for 2016 DOE WAP Plan

Notice of Public Hearing for the Draft Program Year ("PY") 2016 Department of Energy Weatherization Assistance Program State Plan

The Texas Department of Housing and Community Affairs ("the Department") will hold a public hearing to receive comments on the Draft PY 2016 Department of Energy ("DOE") Weatherization Assistance Program ("WAP") State Plan. The hearing will take place at the following time and location:

Tuesday, March 15, 2016

1:30 p.m.

TDHCA Headquarters

221 East 11th Street

Conference Room 116

Austin, Texas 78701

At the hearing, a representative from the Department will accept comments regarding Draft PY2016 DOE WAP State Plan.

Local officials and citizens are encouraged to participate in the hearing process. Written and oral comments received will be used to finalize the Draft PY 2016 DOE WAP State Plan. The public comment period for the Draft PY 2016 DOE WAP State Plan will be open from February 26, 2016 thru March 21, 2016 at 10:00 a.m. Written comments from those who cannot attend the hearing in person may be provided by March 21, 2016 at 10:00 a.m. to Ms. Rita Gonzales-Garza, Community Affairs Division, P.O. Box 13941, Austin, Texas 78711 or by electronic mail to *rita.garza@tdhca.state.tx.us.* A copy of the Draft PY 2016 DOE WAP State Plan may be obtained through TDHCA's website, *http://www.tdhca.state.tx.us/community-affairs/wap/index.htm,* or by calling Ms. Gonzales-Garza at (512) 475-3905 or by writing at the TDHCA address provided above, attention Rita Gonzales-Garza.

The request for public comment is also announced in the TDHCA Public Comment Center at *http://www.tdhca.state.tx.us/public-comment.htm.*

Individuals who require auxiliary aids, services or sign language interpreters for this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989, at least

three (3) days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters at the public hearing should contact Elena Peinado, (512) 475-3814 or by e-mail at *Elena.peinado@tdhca.state.tx.us* at least three (3) days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Elena Peinado al siguiente número (512) 475-3814 o escribir a *Elena.peinado@tdhca.state.tx.us* por lo menos tres días antes de la junta para hacer los preparativos apropiados.

TRD-201600953
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: February 26, 2016

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2016 Emergency Solutions Grants Program Notice of Funding Availability

In anticipation of receiving 2016 Emergency Solutions Grants ("ESG") funds from the U.S. Department of Housing and Urban Development ("HUD"), the Texas Department of Housing and Community Affairs (the "Department") is releasing the 2016 ESG Notice of Funding Availability ("NOFA"). The deadline to submit 2016 ESG applications is April 8, 2016, 5:00 p.m. Austin local time. All of the NOFA and application related materials are available at: *http://www.tdhca.state.tx.us/community-affairs/nofas.htm.*

ESG funds can be utilized for 1) the rehabilitation or conversion of buildings for use as emergency shelter for persons experiencing homelessness; 2) the payment of certain expenses related to operating emergency shelters; 3) essential services related to emergency shelters and street outreach for persons experiencing homelessness; and, 4) homelessness prevention and rapid re-housing assistance.

Interested parties may contact Naomi Trejo, Coordinator for Homelessness Programs and Policy, at *naomi.trejo@tdhca.state.tx.us* or (512) 475-3975 for more information.

TRD-201600955
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: February 26, 2016

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Texas Department of Insurance

Notice of Application by a Small Employer Issuer to be a Risk-Assuming Issuer

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under Insurance Code §1501.312. A small employer health benefit plan issuer is defined by Insurance Code §1501.002(16) as a health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to Insurance Code Chapter 1501, Subchapters C - H. A risk-assuming health benefit plan issuer is defined by Insurance Code §1501.301(4) as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

The Insurance Company of Scott & White

The issuer's application is available for public inspection at the Texas Department of Insurance, Legal Services, Office of Policy Development Counsel. To inspect the application, contact Jennifer Soldano, Staff Attorney, William P. Hobby Jr. Building, 333 Guadalupe, Tower I, Room 920B, Austin, Texas.

If you wish to comment on the application from The Insurance Company of Scott & White to be a risk-assuming issuer, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. On consideration of the application, if the commissioner is satisfied that all requirements of law have been met, the commissioner or the commissioner's designee may take action to approve The Insurance Company of Scott & White's application to be a risk-assuming issuer.

TRD-201600930
Norma Garcia
General Counsel
Texas Department of Insurance
Filed: February 25, 2016

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Texas Department of Licensing and Regulation

Public Notice - Enforcement Plan

The Texas Commission of Licensing and Regulation (Commission) provides this public notice that at their regularly scheduled meeting held January 6, 2016, the Commission adopted the Texas Department of Licensing and Regulation's (Department) revised enforcement plan which was established in compliance with Texas Occupations Code, §51.302(c).

The enforcement plan gives all license holders notice of the specific ranges of penalties and license sanctions that apply to specific alleged violations of the statutes and rules enforced by the Department. The enforcement plan also presents the criteria that are considered by the Department's Enforcement staff in determining the amount of a proposed administrative penalty or the magnitude of a proposed sanction. The enforcement plan is revised to update the penalty matrix for the Elevators, Escalators, and Related Equipment program.

The revised matrix was updated to bring the violations and citations in-line with Texas Health and Safety Code, Chapter 754 and 16 Texas Administrative Code, Chapter 74. The statute has been amended several times, however the most significant changes incorporate increased safety responsibility of elevator owners, contractors and inspectors. This includes reducing the time limits for filing annual inspections and reporting accidents, continuing education requirements for inspectors and plan review requirements for new installations or alterations. Generally, the rules have been amended to incorporate statutory changes. Specific rule changes increased regulation on reporting requirements, equipment removed from service, plan reviews, necessary documentation and equipment testing. Editorial changes were made by adding subject matter headings to each class to make it easier to find a particular violation; correcting legal citations to correspond with the statute; and general language cleanup to improve language consistency and clarity.

The Elevator Advisory Board recommended approval of the revised matrix at their meeting held December 15, 2015. The revised matrix was presented to the Commission on January 6, 2016, and was adopted as recommended.

A copy of the revised enforcement plan is posted on the Department's website and may be downloaded at www.tdlr.texas.gov. You may also

contact the Enforcement Division at (512) 539-5600 or by e-mail at *enforcement@tdlr.texas.gov* to obtain a copy of the revised plan.

TRD-201601055
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: March 2, 2016

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Texas Lottery Commission

Scratch Ticket Game Number 1753 "100X the Cash"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1753 is "100X THE CASH". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 1753 shall be $20.00 per Ticket.

1.2 Definitions in Scratch Ticket Game No. 1753.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 5X SYMBOL, 10X SYMBOL, 20X SYMBOL, 50X SYMBOL, 100X SYMBOL, $5.00, $10.00, $15.00, $20.00, $30.00, $50.00, $75.00, $100, $200, $250, $500, $1,000, $10,000, $100,000 and $2,500,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1753 – 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI

5X SYMBOL	WINX5
10X SYMBOL	WINX10
20X SYMBOL	WINX20
50X SYMBOL	WINX50
100X SYMBOL	WINX100
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$30.00	THIRTY
$50.00	FIFTY
$75.00	SVFV
$100	ONE HUN
$200	TWO HUN
$250	TWOFTY
$500	FIV HUN
$1,000	ONE THOU
$10,000	10 THOU
$100,000	100 THOU
$2,500,000	2.5 MLL

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of $20.00.

G. Mid-Tier Prize - A prize of $30.00, $40.00, $50.00, $100, $200, $250 or $500.

H. High-Tier Prize - A prize of $10,000, $100,000 or $2,500,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1753), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 025 within each Pack. The format will be: 1753-0000001-001.

K. Pack - A Pack of the "100X THE CASH" Scratch Ticket Game contains 025 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The front of Ticket 001 will be shown on the front of the Pack; the back of Ticket 025 will be revealed on the back of the Pack. All Packs will be tightly shrinkwrapped. There will be no breaks between the Tickets in a Pack. Every other pack will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the pack and the front of Ticket 025 will be shown on the back of the Pack.

L. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "100X THE CASH" Scratch Ticket Game No. 1753.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "100X THE CASH" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 66 (sixty-six) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If a player reveals a "5X" Play Symbol, the player wins 5 TIMES the PRIZE for that symbol. If a player reveals a "10X" Play Symbol, the player wins 10 TIMES the PRIZE for that symbol. If a player reveals a "20X" Play Symbol, the player wins 20 TIMES the PRIZE for that symbol. If a player reveals a "50X" Play Symbol, the player wins 50 TIMES the PRIZE for that symbol. If a player reveals a "100X" Play Symbol, the player wins 100 TIMES the PRIZE for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 66 (sixty-six) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut and have exactly 66 (sixty-six) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 66 (sixty-six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 66 (sixty-six) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns of either Play Symbols or Prize Symbols.

B. A Ticket will win as indicated by the prize structure.

C. A Ticket can win up to thirty (30) times.

D. On winning and Non-Winning Tickets, the top cash prizes of $1,000, $10,000, $100,000 and $2,500,000 will each appear at least once, except on Tickets winning thirty (30) times.

E. No matching non-winning YOUR NUMBERS Play Symbols will appear on a Ticket.

F. Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

G. On all Tickets, a Prize Symbol will not appear more than three (3) times except as required by the prize structure to create multiple wins.

H. On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

I. Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols as possible to create matches, unless restricted by other parameters, play action or prize structure.

J. No matching WINNING NUMBERS Play Symbols will appear on a Ticket.

K. YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., 5 and $5, 10 and $10, 15 and $15, 20 and $20, 30 and $30, 50 and $50).

L. The "5X" (WINX5), "10X" (WINX10), "20X" (WINX20), "50X" (WINX50) and "100X" (WINX100) Play Symbols will never appear as a WINNING NUMBERS Play Symbol.

M. The 5X" (WINX5), "l0X" (WINX10), "20X" (WINX20), "50X (WINX50) and "100X" (WINX100) Play Symbols may appear on multi-win Tickets as dictated by the prize structure.

N. The "5X" (WINX5), "10X" (WINX10), "20X" (WINX20), "50X" (WINX50) and "100X" (WINX100) Play Symbols will never appear on a Non-Winning Ticket.

O. The "5X" (WINX5), "10X" (WINX10), "20X" (WINX20), "50X" (WINX50) and "100X" (WINX100) Play Symbols will only appear as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "100X THE CASH" Scratch Ticket Game prize of $20.00, $30.00, $40.00, $50.00, $100, $200, $250 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $30.00, $40.00, $50.00, $100, $200, $250 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas

Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "100X THE CASH" Scratch Ticket Game prize of $10,000, $100,000 or $2,500,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "100X THE CASH" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "100X THE CASH" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "100X THE CASH" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 8,040,000 Scratch Tickets in Scratch Ticket Game No. 1753. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1753 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$20	643,200	12.50
$30	321,600	25.00
$40	321,600	25.00
$50	643,200	12.50
$100	348,400	23.08
$200	26,398	304.57
$250	3,752	2,142.86
$500	2,010	4,000.00
$10,000	30	268,000.00
$100,000	7	1,148,571.43
$2,500,000	4	2,010,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.48. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 1753 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 1753, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201601092
Bob Biard
General Counsel
Texas Lottery Commission
Filed: March 3, 2016

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Scratch Ticket Game Number 1791 "Texas Rangers™"

1.0 Name and Style of Game.

A. The name of Scratch Ticket Game No. 1791 is "TEXAS RANGERS™". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. Tickets for Scratch Ticket Game No. 1791 shall be $5.00 per Ticket.

1.2 Definitions in Scratch Ticket Game No. 1791.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, BASEBALL SYMBOL, HOME PLATE SYMBOL, $5.00, $10.00, $15.00, $20.00, $25.00, $50.00, $100, $250, $500, $1,000, $5,000 and $100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1791 – 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
BASEBALL SYMBOL	WIN
HOME PLATE SYMBOL	WINX5
$5.00	FIV$
$10.00	TEN$
$15.00	FFN$
$20.00	TWY$

$25.00	TWFV$
$50.00	FFTY$
$100	ONHN$
$250	TOFF
$500	FVHN
$1,000	ONTH
$5,000	FVTH
$100,000	100TH

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of $5.00, $10.00 or $15.00.

G. Mid-Tier Prize - A prize of $25.00, $50.00, $100, $250 or $500.

H. High-Tier Prize - A prize of $1,000, $5,000 or $100,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1791), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1791-0000001-001.

K. Pack - A Pack of "TEXAS RANGERS™" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front 075.

L. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Scratch Ticket Game or Scratch Ticket, or Ticket - A Texas Lottery "TEXAS RANGERS™" Scratch Ticket Game No. 1791 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "TEXAS RANGERS™" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If a player reveals a "BASEBALL" Play Symbol, the player wins the prize for that symbol instantly. If a player reveals a "HOME PLATE" Play Symbol, the player wins 5 TIMES the prize for that symbol! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut and have exactly 45 (forty-five) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 45 (forty-five) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Game Ticket (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets in a Pack will not have matching play data, spot for spot.

B. The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

C. No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

D. No matching WINNING NUMBERS Play Symbols on a Ticket.

E. A Ticket may have up to three (3) matching non-winning Prize Symbols unless restricted by other parameters, play action or prize structure.

F. A non-winning Prize Symbol will never be the same as a winning Prize Symbol.

G. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 5 and $5).

H. The "BASEBALL" (WIN) Play Symbol will never appear more than once on a Ticket.

I. The "HOME PLATE" (WINX5) Play Symbol will only appear as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "TEXAS RANGERS™" Scratch Ticket Game prize of $5.00, $10.00, $15.00, $25.00, $50.00, $100, $250 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $25.00, $50.00, $100, $250 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "TEXAS RANGERS™" Scratch Ticket Game prize of $1,000, $5,000 or $100,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "TEXAS RANGERS™" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. a sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

F. If a person is indebted or owes delinquent taxes to the State, and is selected as a winner in a promotional second-chance drawing, the debt to the State must be paid within 30 days of notification or the prize will be awarded to an Alternate.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "TEXAS RANGERS™" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "TEXAS RANGERS™" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

2.9 Promotional Second-Chance Drawings. Any Non-Winning "TEXAS RANGERS™" Scratch Ticket may be entered into one of four promotional drawings for a chance to win a promotional second-chance drawing prize. See instructions on the back of the Scratch Ticket for information on eligibility and entry requirements.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 5,040,000 Scratch Tickets in the Scratch Ticket Game No. 1791. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1791– 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5	571,200	8.82
$10	369,600	13.64
$15	168,000	30.00
$25	67,200	75.00
$50	59,514	84.69
$100	7,350	685.71
$250	1,470	3,428.57
$500	840	6,000.00
$1,000	210	24,000.00
$10,000	84	60,000.00
$100,000	4	1,260000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.05. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 1791 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 1791, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the

State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201601042
Bob Biard
General Counsel
Texas Lottery Commission
Filed: March 1, 2016

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Scratch Ticket Game Number 1792 "Houston Astros™"

1.0 Name and Style of Game.

A. The name of Scratch Ticket Game No. 1792 is "HOUSTON ASTROS™". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. Tickets for Scratch Ticket Game No. 1792 shall be $5.00 per Ticket.

1.2 Definitions in Scratch Ticket Game No. 1792.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, BASEBALL SYMBOL, HOME PLATE SYMBOL, $5.00, $10.00, $15.00, $20.00, $25.00, $50.00, $100, $250, $500, $1,000, $5,000 and $100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1792 – 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
BASEBALL SYMBOL	WIN
HOME PLATE SYMBOL	WINX5
$5.00	FIV$
$10.00	TEN$
$15.00	FFN$
$20.00	TWY$

$25.00	TWFV$
$50.00	FFTY$
$100	ONHN$
$250	TOFF
$500	FVHN
$1,000	ONTH
$5,000	FVTH
$100,000	100TH

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of $5.00, $10.00 or $15.00.

G. Mid-Tier Prize - A prize of $25.00, $50.00, $100, $250 or $500.

H. High-Tier Prize - A prize of $1,000, $5,000 or $100,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1792), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1792-0000001-001.

K. Pack - A Pack of "HOUSTON ASTROS™" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front 075.

L. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Scratch Ticket Game or Scratch Ticket, or Ticket - A Texas Lottery "HOUSTON ASTROS™" Scratch Ticket Game No. 1792 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "HOUSTON ASTROS™" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If a player reveals a "BASEBALL" Play Symbol, the player wins the prize for that symbol instantly. If a player reveals a "HOME PLATE" Play Symbol, the player wins 5 TIMES the prize for that symbol! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut and have exactly 45 (forty-five) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 45 (forty-five) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Game Ticket (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets in a Pack will not have matching play data, spot for spot.

B. The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

C. No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

D. No matching WINNING NUMBERS Play Symbols on a Ticket.

E. A Ticket may have up to three (3) matching non-winning Prize Symbols unless restricted by other parameters, play action or prize structure.

F. A non-winning Prize Symbol will never be the same as a winning Prize Symbol.

G. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 5 and $5).

H. The "BASEBALL" (WIN) Play Symbol will never appear more than once on a Ticket.

I. The "HOME PLATE" (WINX5) Play Symbol will only appear as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "HOUSTON ASTROS™" Scratch Ticket Game prize of $5.00, $10.00, $15.00, $25.00, $50.00, $100, $250 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $25.00, $50.00, $100, $250 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "HOUSTON ASTROS™" Scratch Ticket Game prize of $1,000, $5,000 or $100,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "HOUSTON ASTROS™" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. a sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

F. If a person is indebted or owes delinquent taxes to the State, and is selected as a winner in a promotional second-chance drawing, the debt to the State must be paid within 30 days of notification or the prize will be awarded to an Alternate.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "HOUSTON ASTROS™" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "HOUSTON ASTROS™" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

2.9 Promotional Second-Chance Drawings. Any Non-Winning "HOUSTON ASTROS™" Scratch Ticket may be entered into one of four promotional drawings for a chance to win a promotional second-chance drawing prize. See instructions on the back of the Scratch Ticket for information on eligibility and entry requirements.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 3,000,000 Scratch Tickets in the Scratch Ticket Game No. 1792. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1792 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5	340,000	8.82
$10	220,000	13.64
$15	100,000	30.00
$25	40,000	75.00
$50	34,675	86.52
$100	4,375	685.71
$250	875	3,428.57
$500	450	6,666.67
$1,000	125	24,000.00
$5,000	50	60,000.00
$100,000	3	1,000,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.05. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 1792 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 1792, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the

State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201601046
Bob Biard
General Counsel
Texas Lottery Commission
Filed: March 1, 2016

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Texas Department of Motor Vehicles

Correction of Error

The Texas Department of Motor Vehicles proposed amendments, repeals, and new sections in 43 TAC Chapter 215, concerning Motor Vehicle Distribution, in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1376). Due to a Texas Register staff error, some rule text in proposed §215.174(c)(4) - (7) on page 1414 was not shown to be new language. The corrected paragraphs read as follows:

(4) [~~(5)~~] a sample copy of the vehicle lease agreement between each of the lessors the lease facilitator represents, and the [~~a~~] lessee; [~~and~~]

(5) a sample copy of the required fee disclosure statement regarding fees paid by a vehicle lessor to the vehicle lease facilitator for the facilitation of a vehicle lease or a statement that no such fees were or will be paid;

(6) a list of all vehicle lessors, including names and addresses, for [~~with~~] whom any vehicle lease facilitator solicits or procures a lessee. The vehicle lease facilitator shall update the list upon renewal of a license and within 10 [~~executes leases. This list must be updated in writing upon renewal of a license, and within ten~~] days of the addition of any vehicle lessor to this list; and

(7) a copy of the representation agreement between the vehicle lease facilitators and each lessor.

TRD-201601074

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Plateau Water Planning Group

Notice of Public Meeting

Notice is hereby given that the Plateau Water Planning Group - Region J (PWPG) is seeking input from the public on the scope of planning activities to be considered during the Fifth Cycle of Regional Water Planning (2017-2021)

The Public Meeting will be held in conjunction with the upcoming regular PWPG meeting, to be held in the District Courtroom at the Kinney County Courthouse, 501 S. Ann Street, Brackettville, Kinney County, Texas on April 14, 2016 at 10:00 a.m.

Written and oral comments (not to exceed five (5) minutes per speaker) regarding the scope of activities to be considered during the Fifth Cycle of Regional Water Planning will be accepted at this meeting. Written comments will accepted as part of the record if they are received by 5:00 p.m. on April 13, 2016. Comments may be mailed to:

Mr. Jonathan Letz, Chair, PWPG

700 Main Street, Ste. 101

Kerrville, Texas 78028

Region J includes the following counties: Bandera, Edwards, Kerr, Kinney, Real and Val Verde

A copy of the current 2016 Regional Water Plan is available on the PWPG website (hosted by the Upper Guadalupe River Authority) at *http://www.ugra.org/pdfs/Final2016RWPlan.pdf*

TRD-201601051
Jonathan Letz
Chair
Plateau Water Planning Group
Filed: March 1, 2016

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Public Utility Commission of Texas

Announcement of Application for Adjustment of Rates

The Public Utility Commission of Texas (Commission) received an application from a Class C utility on February 25, 2016, for adjustment of rates pursuant to Texas Water Code §13.1872 (TWC).

Docket Style and Number: Application of PK-RE Development Company, Inc. for a Price Index Rate Adjustment and Request for Waiver, Docket Number 45659.

The Application: PK-RE Development Company, Inc. dba Greenshores Utility Services filed an application requesting an adjustment to the water/sewer base rate and the monthly gallonage rate based on the Commission current price index. The rate/tariff change affects water certificate of convenience and necessity (CCN) No. 12407 and sewer CCN No. 20948, in Travis County. PK-RE meets the definition of a Class C utility because it provides retail water and/or sewer utility service through fewer than 500 taps or connections. As a Class C utility PK-RE is allowed to receive, without a hearing, an annual rate adjustment based on changes in the "price index." The Commission established a price index difference of 1.57% for calendar year 2016 to be used in rate adjustment applications filed under TWC §13.1872.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the Commission through Relay Texas by dialing 7-1-1. All inquiries should reference Docket Number 45659.

TRD-201601027
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 29, 2016

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Announcement of Application for Adjustment of Rates

The Public Utility Commission of Texas (Commission) received an application from a Class C utility on February 26, 2016, for adjustment of rates pursuant to Texas Water Code §13.1872 (TWC).

Docket Style and Number: Application of Lake Ridge Water System, L.P. for a Price Index Rate Adjustment, Docket Number 45663.

The Application: Lake Ridge Water System, L.P. (Lake Ridge) filed an application requesting an adjustment to the water base rate and the monthly gallonage rate based on the Commission's current price index. Lake Ridge meets the definition of a Class C utility because it provides retail water or sewer utility service through fewer than 500 taps or connections. As a Class C utility Lake Ridge is allowed to receive, without a hearing, an annual rate adjustment based on changes in the "price index." The Commission established a price index difference of 1.57%

for calendar year 2016 to be used in rate adjustment applications filed under TWC §13.1872.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Docket Number 45663.

TRD-201601038
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 1, 2016

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Announcement of Application for Adjustment of Rates

The Public Utility Commission of Texas (Commission) received an application from a Class C utility on February 26, 2016, for adjustment of rates pursuant to Texas Water Code §13.1872 (TWC).

Docket Style and Number: Application of Ponder Enterprises, Inc. d/b/a Longhorn Co. for a Price Index Rate Adjustment, Docket Number 45664.

The Application: Ponder Enterprises, Inc. d/b/a Longhorn Co. (Ponder) filed an application requesting an adjustment to the water base rate and the monthly gallonage rate based on the Commission's current price index. Ponder meets the definition of a Class C utility because it provides retail water or sewer utility service through fewer than 500 taps or connections. As a Class C utility Ponder is allowed to receive, without a hearing, an annual rate adjustment based on changes in the "price index." The Commission established a price index difference of 1.57% for calendar year 2016 to be used in rate adjustment applications filed under TWC §13.1872.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Docket Number 45664.

TRD-201601039
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 1, 2016

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Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed CREZ Second Circuit Upgrade Project

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on February 26, 2016, to amend a certificate of convenience and necessity (CCN) for a proposed transmission line in Briscoe, Carson, Castro, Deaf Smith, Oldham, Potter, and Swisher Counties, Texas.

Docket Style and Number: Application of Sharyland Utilities, L.P. to Amend its Certificate of Convenience and Necessity for the CREZ Second Circuit Upgrade Project in Briscoe, Carson, Castro, Deaf Smith, Oldham, Potter, and Swisher Counties; P.U.C. Docket No. 45622; SOAH Docket No. 473-16-2785.

The Application: Sharyland Utilities, L.P. filed an application with the commission to amend its CCN for a second 166-mile circuit upgrade to Competitive Renewable Energy Zone (CREZ) transmission lines in Briscoe, Carson, Castro, Deaf Smith, Oldham, Potter, and Swisher Counties, Texas. Sharyland proposes to add a second circuit to each of four single-circuit, CREZ transmission lines that currently consist of single-circuit lines on double-circuit-capable transmission towers: Tule Canyon to Ogallala, Ogallala to Windmill, Windmill to AJ Swope, and AJ Swope to Alibates. The project is identified as the Second Circuit Upgrade Project.

Sharyland's application in this proceeding proposes to install the second circuit on those same towers and within the same 175-foot wide right-of-way where the existing, single-circuit lines were built. Therefore, no alternative routes were considered. The estimated date to energize facilities for this transmission line is August 2018. The total estimated cost for the project is $77,400,000.

Pursuant to PURA §39.203(e), the commission must issue a final order in this docket before the 181st day after the date the application is filed with the commission.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. The deadline for intervention in this proceeding is March 28, 2016. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference P.U.C. Docket No. 45622; SOAH Docket No. 473-16-2785.

TRD-201601048
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 1, 2016

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Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on February 25, 2016, to amend a certificate of convenience and necessity for a proposed transmission line in Rusk and Panola Counties, Texas.

Docket Style and Number: Application of the City of Garland to Amend a Certificate of Convenience and Necessity for the Rusk to Panola Double-Circuit 345-kV Transmission Line in Rusk and Panola Counties, P.U.C. Docket No. 45624; SOAH Docket No. 473-16-2751.

The Application: The application of the City of Garland for a proposed 345-kV transmission line is designated as the Rusk to Panola Transmission Line Project. The project is being constructed pursuant to the order of the Federal Energy Regulatory Commission in Docket No. TX11-1-001, directing Garland to connect the Southern Cross project to the Electric Reliability Council of Texas (ERCOT) grid in accordance with the offer of settlement in that case. The proposed 345-kV line will begin at a new Oncor Electric Delivery Company switching station in Rusk County and extend eastward for approximately 37 to 40 miles to a new Garland Power & Light switching station in Panola County near the Texas/Louisiana state line. The total estimated cost for the project ranges from approximately $103,779,478 million to $109,925,443 million depending on the route chosen.

The proposed project is presented with 12 alternate routes. Any of the routes or route segments presented in the application could, however, be approved by the commission. Under Public Utility Regulatory Act

§37.051(c-2) and (i) the commission shall act on this application not later than the 185th day after the application is filed.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention will be established. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45624.

TRD-201601021
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 29, 2016

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Notice of Application to Amend Water and Sewer Certificates of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application to amend water and sewer certificates of convenience and necessity (CCN) in Montgomery County.

Docket Style and Number: Application of Aqua Texas, Inc. and Montgomery County Municipal Utility District No. 126 for Approval of a Service Agreement Designating Service Area and Certificate Rights, and to Decertify Certain Areas in Montgomery County, Docket Number 45656.

The Application: Aqua Texas, Inc. d/b/a Aqua Texas (Aqua) and Montgomery County Municipal Utility District No. 126 (MUD 126) filed an application to amend Aqua's water certificate of convenience and necessity (CCN) No. 13203 and sewer CCN No. 21065 in Montgomery County to MUD 126. Aqua and MUD 126 have entered into a contract designating certain CCN service areas for transfer to MUD 126 in exchange for compensation to Aqua, and Aqua seeks to voluntarily decertify a portion of its certificated service area. Approximately 173.63 acres of certificated service area will be transferred to MUD 126. Retail customers in this area are already served by MUD 126. Approximately 6.4 acres will be decertified from Aqua's CCNs. No customers will be affected by this decertification.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45656.

TRD-201601037
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 1, 2016

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Notice of Petition for Amendment to Certificate of Convenience and Necessity by Expedited Release

Notice is given to the public of the filing with the Public Utility Commission of Texas on February 26, 2016, a petition to amend a certificate of convenience and necessity by expedited release in Montgomery County, Texas.

Docket Style and Number: Petition of LGI Homes to Amend Pinehurst Decker Prairie WSC's Certificate of Convenience and Necessity by Expedited Release in Montgomery County, Docket No. 45661.

The Petition: LGI Homes filed with the Commission a petition for expedited release from Pinehurst Decker Prairie WSC's water certificate of convenience and necessity (CCN) number 11768 in Montgomery County pursuant to Texas Water Code §13.254 (a-5) (TWC) and 16 Texas Administrative Code §24.113(r) (TAC).

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas no later than March 30, 2016, by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45661.

TRD-201601034
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 1, 2016

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Notice of Petition for Amendment to Certificate of Convenience and Necessity by Expedited Release

Notice is given to the public of the filing with the Public Utility Commission of Texas on February 26, 2016, a petition to amend a certificate of convenience and necessity by expedited release in Montgomery County, Texas.

Docket Style and Number: Petition of LGI Homes to Amend HMW SUD's Certificate of Convenience and Necessity by Expedited Release in Montgomery County, Docket No. 45662.

The Petition: LGI Homes filed with the Commission a petition for expedited release from HMW SUD's water certificate of convenience and necessity (CCN) number 10342 in Montgomery County pursuant to Texas Water Code §13.254 (a-5) (TWC) and 16 Texas Administrative Code §24.113(r) (TAC).

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas no later than March 30, 2016, by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45662.

TRD-201601035
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 1, 2016

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Public Notice of Workshop and Request for Comments

Public Utility Commission of Texas (commission) Staff will hold a workshop regarding Project No. 45633, *Project to Identify Issues Pertaining to Lubbock Power & Light's Proposal to Become Part of the Electric Reliability Council of Texas,* on **Tuesday, May 3, 2016, at 9:30 a.m.** The workshop will be conducted in the Commissioners' Hearing

Room, located on the 7th floor of the William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78711.

In preparation for the workshop, commission staff requests comments from interested parties on the questions and issues listed below. Commission staff also requests comments generally on Lubbock Power & Light's proposal to become part of the Electric Reliability Council of Texas. Parties are invited to submit written comments in response to commission staff's questions and on Lubbock Power & Light's proposal generally by filing 16 copies of such comments with the commission's Central Records no later than **3:00 p.m. on Monday, April 11, 2016.** Interested parties are invited to file reply comments by filing 16 copies of such responses with Central Records no later than **3:00 p.m. on Tuesday, April 26, 2016.** All comments and reply comments should reference Project No. 45633 and should be limited to 20 pages.

Questions concerning the workshop or this notice should be referred to Kennedy Meier, Legal Division, at Kennedy.Meier@puc.texas.gov or (512) 936-7265. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1.

QUESTIONS

In addition to comments on Lubbock Power & Light's proposal generally, commission staff seeks comments on the following possible issues. Commission staff's list of possible issues is not intended to be comprehensive. Commission staff requests that commenters identify issues in addition to the possible issues identified by commission staff below.

Transmission Service Provider Selection

1. How should the transmission service providers for the transmission facilities that would be needed to interconnect Lubbock Power & Light (LP&L or Lubbock) to the Electric Reliability Council of Texas (ERCOT) be selected?

Overall Evaluation

2. Would making LP&L part of ERCOT be in the public interest?

3. Would the benefits of LP&L becoming part of ERCOT exceed the costs of LP&L becoming part of ERCOT?

4. What is the impact on production costs for both ERCOT and the Southwest Power Pool (SPP)?

5. What is the impact on ancillary service costs for both ERCOT and SPP?

6. What is the impact on transmission costs for SPP?

7. What is the impact on reliability for both ERCOT and SPP?

8. Are there any future projects avoided due to the Lubbock integration into ERCOT?

9. What is the impact of integrating the Lubbock footprint on the capacity, demand, and reserve margins for ERCOT and SPP?

10. Who is responsible for the costs of disconnecting LP&L from SPP and interconnecting into ERCOT?

11. For any transmission facilities that LP&L constructs to interconnect LP&L with ERCOT, should LP&L be required to forego inclusion of any of those costs in its wholesale transmission rates? If so, how much?

12. For any transmission facilities that Transmission Service Providers other than LP&L construct to interconnect LP&L with ERCOT, should LP&L be required to make contributions in aid of construction for those interconnecting transmission facilities and forego inclusion of any of those costs in its wholesale transmission rates? If so, how much?

13. What is the impact on Congestion Revenue Rights for ERCOT and Transmission Congestion Rights for SPP?

14. What would the integration impact be for storm hardening and storm recovery and reliability for both Lubbock and surrounding areas?

15. In addition to LP&L, which utilities, if any, in Texas that are currently in SPP want to become part of ERCOT? Should the possible interconnection of these utilities to ERCOT be included in the evaluation of interconnecting LP&L to ERCOT? Are any utilities harmed by remaining in SPP?

16. How would the commission's jurisdiction of Lubbock change post-integration?

17. What is the timeline for integrating LP&L into ERCOT's operations and market systems and are there any milestones to determine rate of completion?

18. What is the timeline for regulatory filings in Texas and other jurisdictions?

19. What is the cost of integrating the remaining 170MW load into ERCOT and are any additional benefits accrued? What would be the costs and benefits of maintaining systems in both SPP and ERCOT should the remaining 170MW load remain in SPP?

20. Changes made to the transmission system as part of the process of integrating LP&L into ERCOT may provide new opportunities for wind developers. What impact, if any, will increased wind power penetration have on consumers in ERCOT and on the ERCOT system?

Studies

21. What studies should ERCOT perform?

22. What studies should SPP perform?

Benefits

23. What would be the benefits of LP&L becoming part of ERCOT? Please quantify the benefits to the extent quantification is possible.

Costs

24. What would be the costs of LP&L becoming part of ERCOT?

25. What are the ERCOT transmission capital costs net of synchronous condensers?

26. What are the costs to disconnect Lubbock from SPP?

TRD-201601049
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 1, 2016

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Texas Water Development Board

Applications for March 3, 2016

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #73704, a request from the Town of Vinton, 436 E. Vinton Road, Vinton, Texas 79821, received August 27, 2015, for financial assistance in the amount of $2,709,070 consisting of a $825,000 loan and $1,884,070 in loan forgiveness from the Clean Water State Revolving Fund to finance the planning, acquisition, and design of a new centralized wastewater collection system.

Project ID #62685, a request from the City of Stamford, P.O. Drawer 191, Stamford, Texas 79553-0191, received September 22, 2015, for financial assistance in the amount of $19,765,708, consisting of a $9,530,000 loan and $10,235,708 in loan forgiveness from the Drinking Water State Revolving Fund to finance the planning, acquisition, design, and construction phases for water system improvements.

Project ID #62684, a request from the City of Beeville, 400 N. Washington, Beeville, Texas 78102, received September 22, 2015, for a $3,300,000 loan from the Drinking Water State Revolving Fund to finance water system improvements.

Project ID #62619, a request from Dario V. Guerra, III, doing business as Derby, Ing., P.O. Box 721025, McAllen, Texas 78501, received September 24, 2015, for $140,000 in loan forgiveness from the Drinking Water State Revolving Fund to finance construction costs associated with upgrades to the existing water system; and approval of a waiver related to the entity's Water Audit, requiring the entity to complete and file a Water Audit prior to release of construction funds.

TRD-201600931
Les Trobman
General Counsel
Texas Water Development Board
Filed: February 25, 2016

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Texas Windstorm Insurance Association

Request for Proposals

Purpose of Request for Proposals

The Texas Windstorm Insurance Association (TWIA) and Texas FAIR Plan Association (TFPA) will issue a Request For Qualifications (RFP) for Internal Audit Services. As described in the RFP, the purpose is to obtain proposals from qualified Respondents for internal audit services.

Proposal/Response Format

The RFP will be published on the TWIA website on or about March 1, 2016 at: http://www.twia.org. Further information regarding the RFP will also be available on TWIA's website at this address, including any updates, amendments, and clarifications.

Mandatory Response Requirements

Applications must meet all requirements of the RFP. Applications will be reviewed by the Association and evaluated as outlined in the RFP.

Rights and Obligations

TWIA/TFPA is not responsible for any costs incurred in responding to this RFP, and TWIA/TFPA reserves the right to accept or reject any or all applications in its sole discretion. TWIA/TFPA is under no obligation to award a contract on the basis of the RFP. TWIA/TFPA reserves the right to issue other RFPs for the services outlined in this RFP.

Contact Information

Any requests for information for the purpose of this RFP should be directed to:

Email:

drupert@twia.org

Mail:

Texas Windstorm Insurance Association

Internal Audit Department

Attn: Darrell Rupert

5700 South Mopac, Building A

Austin, TX 78749

TRD-201601050
Darrell Rupert
Interim Internal Audit Director
Texas Windstorm Insurance Association
Filed: March 1, 2016

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 40 (2015) is cited as follows: 40 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "40 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 40 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: http://www.sos.state.tx.us. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC*) is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1…….....950 *(P)*

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