

# ADOPTED RULES

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

## TITLE 1. ADMINISTRATION

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

#### CHAPTER 382. WOMEN'S HEALTH SERVICES SUBCHAPTER A. HEALTHY TEXAS WOMEN

##### 1 TAC §§382.1, 382.3, 382.5, 382.7, 382.9, 382.11, 382.13, 382.15, 382.17, 382.19, 382.21, 382.23, 382.25, 382.27, 382.29

The Texas Health and Human Services Commission (HHSC) adopts new Chapter 382, Women's Health Services, Subchapter A, Healthy Texas Women, §382.1, concerning Introduction; §382.3, concerning Non-entitlement and Availability; §382.5, concerning Definitions; §382.7, concerning Client Eligibility; §382.9, concerning Application and Renewal Procedures; §382.11, concerning Financial Eligibility Requirements; §382.13, concerning Denial, Suspension, or Termination of Services and Client Appeals; §382.15, concerning Covered and Non-covered Services; §382.17, concerning Health-Care Providers; §382.19, concerning Prohibition of Abortion; §382.21, concerning Reimbursement; §382.23, concerning Health-Care Provider's Request for Review of Claim Denial; §382.25, concerning Confidentiality and Consent; §382.27, concerning Audits and Reports; and §382.29, concerning Severability. Sections 382.1, 382.3, 382.11, 382.13, 382.19, 382.27, and 382.29 are adopted without changes to the proposed text as published in the March 25, 2016, issue of the *Texas Register* (41 TexReg 2270) and will not be republished. Sections 382.5, 382.7, 382.9, 382.15, 382.17, 382.21, 382.23, and 382.25 are adopted with changes and will be republished.

#### BACKGROUND AND JUSTIFICATION

The new rules allow the transition and consolidation of the Texas Women's Health Program (TWHP) and the Expanded Primary Health Care Program (EPHC) into the Health Texas Women (HTW) program, which will be operated by HHSC beginning July 1, 2016.

In 2014, the Sunset Advisory Commission reviewed the Texas Health and Human Services agencies, including its women's health programs. The Sunset Advisory Commission issued the recommendation that HHSC consolidate the women's health care programs in order to improve service and efficiency for clients and providers. This included the recommendation to consolidate the existing Texas Women's Health Program at HHSC and the Expanded Primary Healthcare Program at the Department of State Health Services (DSHS) into one program and division at HHSC.

In response to the Sunset Advisory Commission's recommendations, the 84th Texas Legislature enacted Texas Government Code §531.0201(a)(2)(C) to transfer client services functions performed by DSHS to HHSC. Texas Government Code §531.0204 was also enacted to require the HHSC Executive Commissioner to develop a transition plan to include an outline of HHSC's reorganized structure, and a definition of "client services functions" to transfer to HHSC.

Furthermore, the 2016-2017 General Appropriations Act, House Bill 1, 84th Legislature, Regular Session, 2015, merged the women's health strategies (DSHS Strategy B.1.3., Family Planning Services, and Strategy B.1.4., Community Primary Care Services) into a single strategy within the HHSC Budget (HHSC Strategy D.2.3., Women's Health Services).

The transition plan developed by HHSC pursuant to Texas Government Code §531.0204 includes the consolidation of women's health services performed in the HHSC Texas Women's Health Program and DSHS Expanded Primary Health Care Program under HHSC as of September 1, 2015.

On July 1, 2016, HHSC will consolidate the Texas Women's Health Program and the Expanded Primary Healthcare Program into a new program fully funded by state general revenue. The new program will be named Healthy Texas Women. The Healthy Texas Women program will be a successor program to the Medicaid Women's Health Program and therefore subject to Texas Human Resources Code §32.024(c-1).

#### COMMENTS

The 30-day comment period ended April 26, 2016. During this period, HHSC received comments regarding the new rules from five entities. A summary of comments relating to the rules and HHSC's responses follow.

HHSC received comments in support of the proposed rules, either in whole or in part, from the following entities: the Texas Association of Community Health Centers, Texans Care for Children, Texas Right to Life, the Texas Women's Healthcare Coalition, and the Women's Health and Family Planning Association of Texas.

HHSC received comments opposed to the proposed rules, either in whole or in part, from the following entities: the Texas Association of Community Health Centers, Texans Care for Children, and the Texas Women's Healthcare Coalition.

HHSC received comments from the following entities requesting changes to the proposed rules: the Texas Association of Community Health Centers, Texans Care for Children, and the Texas Women's Healthcare Coalition.

#### *General Comments*

Comment: One commenter stated that HTW does not qualify as "minimum essential coverage" as required by the Affordable Care Act. As such, the commenter suggested that HHSC take all steps necessary to ensure that clients eligible for Medicaid or for coverage under the Health Insurance Marketplace are informed that enrollment in HTW will not prevent a tax penalty.

Response: HHSC is not able to implement this requirement as it is beyond the scope of the HTW program rules. HHSC does not have the authority to determine what qualifies as "minimum essential coverage" or what will prevent a tax penalty under the Affordable Care Act.

Comment: Several commenters suggested that HHSC transfer a female's HTW application information to the federal Health Insurance Marketplace at the end of her Pregnant Women's Medicaid certification period, even if she is auto-enrolled into HTW.

Response: HHSC declines to transfer the female's application information to the Health Insurance Marketplace due to concerns about ensuring client privacy. Furthermore, enrollment in the Health Insurance Marketplace requires action on the applicant's part which the HTW program is not constructed to handle.

Comment: A commenter suggested that HHSC help HTW applicants eligible for Medicaid or the federal Health Insurance Marketplace coverage to enroll, since HTW is not considered minimum essential coverage under the Affordable Care Act.

Response: The HTW application requires an applicant to sign that they understand that their HTW application is not used to determine if they qualify for Medicaid, but that they can apply for Medicaid at any time. Appropriate staff are available to assist with enrollment applications for Medicaid.

Comment: One commenter noted similarities and differences between the Title X Family Planning Program and the HTW program. The commenter stated that because the proposed definition of "promote" in §328.17(c)(1) does not include "providing, upon the patient's request, neutral, factual information and nondirective counseling, including the name, address, telephone number, and other relevant information about a provider," the rule, if adopted, would allow a Title X provider who participates in the HTW program to comply with Title X requirements to provide neutral, factual information and nondirective counseling on family planning options available under the Title X program. The commenter also noted that proposed §382.25(f) requires parental consent from a minor's parent, managing conservator, or guardian for the provision of HTW services only as authorized by Texas Family Code, Chapter 32, or by federal law or regulations, and Title X providers must comply with Title X federal requirements.

Response: The Title X Family Planning Program is separate and distinct federally-funded program from the HTW program that is administered by HHSC and fully funded with state general revenue. HHSC does not disagree that a provider may, if properly qualified, participate in both programs simultaneously.

#### *§382.1, Introduction*

HHSC did not receive any public comments regarding this proposed rule.

#### *§382.3, Non-entitlement and Availability*

HHSC did not receive any public comments regarding this proposed rule.

#### *§382.5, Definitions*

Comment: A commenter suggested expanding the definition of "contraceptive method" to include any pregnancy prevention method approved by the United States Food and Drug Administration (FDA). The commenter further recommended that all FDA-approved contraceptive methods must be made available to a client either directly (preferably on-site) or by referral. The commenter clarified that not all brands of FDA-approved contraceptive methods need to be made available, but that each major contraceptive category must be made available.

Response: Although the current definition of "contraceptive method" is intended to include any pregnancy prevention method approved by the FDA, except emergency contraception, the rule language in §382.5(6) has been amended to include clearer language. The rule will be republished.

With regard to emergency contraception, the HTW service array is based upon requirements outlined in former Texas Human Resources Code §32.0248 (now expired). Although this section of the Texas Human Resources Code has expired, HHSC believes the legislative guidance to administer HTW as a successor program to the Medicaid Women's Health Program, and the Texas Women's Health Program, means the service array should remain similar. Texas Human Resources Code §32.0248 expressly authorized the provision of contraceptives, "except for the provision of emergency contraceptives." HTW will maintain similar contraceptive coverage as directed for the Medicaid Women's Health Program. All other contraceptive methods approved by the United States Food and Drug Administration will be made available to an HTW client either directly or by referral.

#### *§382.7, Client Eligibility*

Comment: Several commenters suggested that females who received benefits through the CHIP should be adjunctively eligible to receive HTW services. Several commenters also suggested that females that are 19 years of age and aging out of CHIP or Children's Medicaid should be automatically enrolled in HTW.

Response: HHSC is not able to implement this recommendation at this time. Currently, the HHSC eligibility system, the Texas Integrated Eligibility and Redesign System (TIERS), is not designed to transfer program eligibility from CHIP or Children's Medicaid to HTW due to a significant difference in eligibility criteria. In order for females enrolled in CHIP or Children's Medicaid to be eligible to receive HTW services, a substantial system change to TIERS would be required and would be subject to additional financial appropriations.

Comment: A commenter suggested that females who receive benefits through the federal Health Insurance Marketplace should be eligible to receive HTW services. Another commenter suggested including females as eligible to receive HTW services who have creditable health coverage that requires cost sharing.

Response: HHSC declines to make this revision. Given funding limitations, it is the intent of HTW to serve low-income females that do not already have creditable health coverage for services provided by HTW. One of the goals of HTW is to reduce the overall cost of publicly-funded health care (including federally-funded health care) by providing low-income Texans without insurance coverage access to safe, effective services that are consistent with the program objectives.

Comment: A commenter suggested auto-enrolling females ages 15 to 17 into HTW at the end of their Pregnant Women's Medicaid certification periods.

Response: HHSC declines to make this revision. Automatic enrollment for females ages 15 to 17 is not possible due to the fact that this eligibility group can only apply for HTW services if a parent or legal guardian applies on their behalf, as specified in §382.7(a)(1)(B).

#### *§382.9, Application and Renewal Procedures*

Comment: Several commenters suggested that HHSC use available electronic resources to verify identity and citizenship before requesting such documentation from an applicant. The commenters recommended adding that citizenship will only be verified once, unless HHSC receives conflicting information related to citizenship. If an applicant's citizenship has already been verified by HHSC for eligibility for another program, the applicant will not be required to re-verify her citizenship.

Response: TIERS does attempt to electronically verify an HTW applicant's citizenship and identity prior to requesting verification from the applicant. Current Texas Women's Health Program clients do not have to resubmit proof of citizenship or identification if they renew or reapply for coverage. This policy was intended to apply to HTW, and §382.9(g) has been consequently amended to show this clarification. The rule will be republished.

#### *§382.11, Financial Eligibility Requirements*

Comment: Several commenters suggested that an applicant or client should be considered adjunctively eligible for HTW at an initial or renewal application, and therefore automatically financially eligible, if the applicant or client is in a CHIP budget group for someone receiving CHIP.

Response: HHSC declines to make this revision at this time. An HTW applicant or client is considered adjunctively eligible for HTW at an initial or renewal application, and therefore automatically financially eligible, if they are receiving benefits or are a member of a household that receives benefits through a program that has similar eligibility requirements to HTW. Currently, TIERS is not designed to transfer program eligibility from CHIP to HTW due to a significant difference in eligibility criteria. In order for females enrolled in CHIP to be eligible to receive HTW services, a substantial system change to TIERS would be required and would be subject to additional financial appropriations.

Comment: A commenter suggested making the financial eligibility requirements identical for both HTW and the Family Planning Program.

Response: HHSC declines to make this revision. HTW and the Family Planning Program are designed to offer unique services to distinct populations. Specifically, HTW will serve clients historically covered by the Expanded Primary Health Care (EPHC) program and the Texas Women's Health Program (TWHP), which differ from the population served by the Family Planning Program.

Comment: A commenter suggested excluding child support payments from the calculation of countable income for HTW financial eligibility determination.

Response: The recommended edit is not necessary. It is specified in §382.11(a)(2)(E) that child support payments are deducted by HHSC when determining countable income.

Comment: A commenter suggested defining what income is included in countable income.

Response: HHSC declines to make this revision. The income included in countable income includes all sources of income not deducted by HHSC under §382.11(a)(2).

Comment: A commenter suggested defining how family size will be determined.

Response: The recommended edit is not necessary. To determine income eligibility, HHSC counts the income of the individuals listed in §382.11(a)(1)(A) and (B).

#### *§382.13, Denial, Suspension, or Termination of Services and Client Appeals*

HHSC did not receive any public comments regarding this proposed rule.

#### *§382.15, Covered and Non-covered Services*

Comment: Several commenters suggested that the list of covered services should be more comprehensive. One commenter suggested adding screening and treatment for hypertension, diabetes, postpartum depression, and other preconception and interconception care including mental health screening, obesity screening, nutrition counseling and education, and smoking and tobacco cessation counseling. Commenters suggested adding additional details surrounding family planning exams, follow-up visits related to the chosen contraceptive methods, sterilization, follow-up visits related to sterilization including procedures to confirm sterilization, counseling on specific methods and use of contraception, pregnancy testing, screening and treatment for sexually transmitted infection, screening for diabetes mellitus, screening for hypercholesterolemia, and other treatment options. One commenter also suggested including details surrounding the removal of temporary contraceptive methods.

Response: HHSC agrees that more detail should be provided regarding the covered services listed in this section. HHSC has revised §382.15(a) to specifically include pregnancy testing and sexually transmitted infection screening and treatment as HTW covered services under §382.15(a)(5) and (6), respectively.

HHSC has also included a statement in §382.15(a)(10) that services are covered subject to available funding, to clarify that the list of covered services in §382.15 is not an exhaustive list of covered services in HTW.

Comment: Several commenters suggested including in rule that females who have been auto-enrolled into HTW should continue to receive treatment for certain chronic conditions. One commenter specified that this treatment should be contingent on available funding.

Response: HHSC agrees that females who have been auto-enrolled into HTW should continue to receive treatment for chronic conditions included in the HTW services array, but declines to require this in rule. The proposed rules do not prevent a female from continuing to receive treatment for a condition covered by HTW once she is auto-enrolled into the program.

Comment: Several commenters suggested removing counseling on and provision of emergency contraceptives as a non-covered service.

Response: HHSC declines to make this revision. The HTW service array is based upon requirements outlined in former Texas Human Resources Code §32.0248 (now expired). Although this section of the Code has expired, we believe the legislative guidance to administer HTW as a successor program to the Medicaid Women's Health Program, and the Texas Women's Health

Program, means the service array should remain similar. Texas Human Resources Code §32.0248 expressly authorized the provision of contraceptives, "except for the provision of emergency contraceptives." HTW will maintain similar contraceptive coverage as directed for the Medicaid Women's Health Program.

Comment: A commenter suggested including a provision that states that payment for screening and treatment for conditions specified by HHSC are contingent on available funding.

Response: HHSC agrees that all covered services and treatment will be provided based on available program funding. As stated under §382.3(b), HTW services are subject to the availability of appropriated funds. For further clarification, HHSC revised §382.15 to include an additional statement that HTW covers other services subject to available funding.

#### §382.17, *Health-Care Providers*

Comment: One commenter stated that HHSC should take all necessary steps to reduce administrative barriers to program enrollment and take steps to increase provider enrollment.

Response: HHSC agrees that HTW provider enrollment should be as streamlined as possible in order to increase HTW provider enrollment across the state. HHSC will conduct several trainings statewide to recruit and retain HTW providers, and will also offer technical assistance to providers to ensure that the enrollment process is efficient and accurate.

Comment: One commenter stated that the requirement that all HTW fee-for-service program income be expended before an HTW contractor can draw down their cost-reimbursement funding may be difficult for providers.

Response: The topic addressed in this comment is a contractual provision and is beyond the scope of program rules. HHSC encourages the commenter to contact program staff with any additional questions related to program contracts. HTW staff can be contacted at:

Moreton Building  
1100 W 49th Street, MC-0224th  
Austin, Texas 78756  
(512) 776-7111

#### §382.19, *Prohibition of Abortion*

HHSC did not receive any public comments regarding this proposed rule.

#### §382.21, *Reimbursement*

Comment: A commenter suggested including a provision regarding not denying services due to inability to pay.

Response: HHSC agrees that an HTW client should not be denied services due to an inability to pay. This was intended to be program policy and HHSC has added subsection (d) to include this provision. The rule will be republished.

#### §382.23, *Provider's Request for Review of Claim Denial*

HHSC did not receive any public comments regarding this proposed rule.

#### §382.25, *Confidentiality and Consent*

Comment: A commenter suggested excluding reports of child abuse from the written release authorization provision.

Response: HHSC agrees that HTW providers have a legal obligation to report suspected child abuse and neglect. As required by the Texas Medicaid Provider Agreement, which all HTW providers must sign, all HTW providers must comply with federal and state laws regarding reporting suspected child abuse. Proposed §382.25(b) does not supersede existing legal obligations to report child abuse, and HHSC declines to include reporting obligations in the program rules.

Comment: A commenter suggested including provisions regarding not requiring consent from a spouse to receive family planning services.

Response: HHSC agrees that a client does not need consent from a spouse to receive HTW family planning services, and has added subsection (g) to include this provision. The rule will be republished.

Comment: A commenter suggested including provisions regarding civil rights, freedom from coercion, and child abuse reporting including requiring providers to develop a policy for Human Anti-Trafficking and Intimate Partner Violence.

Response: All HTW providers have a legal obligation to comply with existing federal and state laws, including those addressing civil rights, freedom from coercion, and child abuse reporting. HHSC declines to restate these legal obligations in the program rules.

#### §382.27, *Audits and Reports*

HHSC did not receive any public comments regarding this proposed rule.

#### §382.29, *Severability*

HHSC did not receive any public comments regarding this proposed rule.

#### *Other Changes*

Non-substantive changes to the rules were made, but were not in response to the public comments received. Proposed §382.5 was updated to remove the definition of "provider" since "HTW provider" and "health-care provider" are already defined terms in program rule. The term "provider" was updated throughout the rule text to either "HTW provider" or "health-care provider" as appropriate for consistency purposes. Proposed §382.7(f) and §382.9(c) were updated to clarify the start of HTW coverage for females who are auto-enrolled from Pregnant Women's Medicaid to HTW and for females who apply for HTW in accordance with §382.9 (relating to Application and Renewal Procedures).

#### STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority to adopt rules necessary to carry out the commission's duties under Chapter 531.

The adopted new rules are authorized generally by Texas Government Code §531.0201(a)(2)(C), which transfers client services functions performed by DSHS to HHSC.

#### §382.5. *Definitions.*

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

- (1) Affiliate--

(A) An individual or entity that has a legal relationship with another entity, which relationship is created or governed by at least one written instrument that demonstrates:

(i) common ownership, management, or control;

(ii) a franchise; or

(iii) the granting or extension of a license or other agreement that authorizes the affiliate to use the other entity's brand name, trademark, service mark, or other registered identification mark.

(B) The written instruments referenced in subparagraph (A) of this definition may include a certificate of formation, a franchise agreement, standards of affiliation, bylaws, articles of incorporation or a license, but do not include agreements related to a physician's participation in a physician group practice, such as a hospital group agreement, staffing agreement, management agreement, or collaborative practice agreement.

(2) Applicant--A female applying to receive services under HTW, including a current client who is applying to renew.

(3) Budget group--Members of a household whose needs, income, resources, and expenses are considered in determining eligibility.

(4) Child--An adoptive, step, or natural child who is under 19 years of age.

(5) Client--A female who receives services through HTW.

(6) Contraceptive method--Any birth control options approved by the United States Food and Drug Administration, with the exception of emergency contraception.

(7) Corporate entity--A foreign or domestic non-natural person, including a for-profit or nonprofit corporation, a partnership, or a sole proprietorship.

(8) Covered service--A medical procedure for which HTW will reimburse an enrolled health-care provider.

(9) Elective abortion--The intentional termination of a pregnancy by an attending physician who knows that the female is pregnant, using any means that is reasonably likely to cause the death of the fetus. The term does not include the use of any such means:

(A) to terminate a pregnancy that resulted from an act of rape or incest;

(B) in a case in which a female suffers from a physical disorder, physical disability, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy, that would, as certified by a physician, place the female in danger of death or risk of substantial impairment of a major bodily function unless an abortion is performed; or

(C) in a case in which a fetus has a life-threatening physical condition that, in reasonable medical judgment, regardless of the provision of life-saving treatment, is incompatible with life outside the womb.

(10) Family planning services--Educational or comprehensive medical activities that enable individuals to determine freely the number and spacing of their children and to select the means by which this may be achieved.

(11) Federal poverty level--The household income guidelines issued annually and published in the *Federal Register* by the United States Department of Health and Human Services.

(12) Health-care provider--A physician, physician assistant, nurse practitioner, clinical nurse specialist, certified nurse midwife, federally qualified health center, family planning agency, health clinic, ambulatory surgical center, hospital ambulatory surgical center, laboratory, or rural health center.

(13) Health clinic--A corporate entity that provides comprehensive preventive and primary health care services to outpatient clients, which must include both family planning services and diagnosis and treatment of both acute and chronic illnesses and conditions in three or more organ systems. The term does not include a clinic specializing in family planning services.

(14) HHSC--The Texas Health and Human Services Commission or its designee.

(15) HTW--The Healthy Texas Women program administered by HHSC as outlined in this subchapter.

(16) HTW provider--A health-care provider that is qualified to perform covered services. An HTW provider may be contracted with HHSC to provide additional services.

(17) Medicaid--The Texas Medical Assistance Program, a joint federal and state program provided for in Texas Human Resources Code Chapter 32, and subject to Title XIX of the Social Security Act, 42 U.S.C. §§1396 et seq.

(18) Minor--In accordance with the Texas Family Code, a person under 18 years of age who has never been married and never been declared an adult by a court (emancipated).

(19) Third-party resource--A person or organization, other than HHSC or a person living with the applicant or client, who may be liable as a source of payment of the applicant's or client's medical expenses (for example, a health insurance company).

(20) Unintended pregnancy--Pregnancy a female reports as either mistimed or undesired at the time of conception.

(21) U.S.C.--United States Code.

#### §382.7. Client Eligibility.

(a) Criteria. A female is eligible to receive services through HTW if she:

(1) meets the following age requirements:

(A) is 18 through 44 years of age, inclusive; or

(B) is 15 through 17 years of age, inclusive, and has a parent or legal guardian apply, renew, and report changes to her case on her behalf;

(2) is not pregnant;

(3) has countable income (as calculated under §382.11 of this subchapter (relating to Financial Eligibility Requirements) that does not exceed 200 percent of the federal poverty level;

(4) is a United States citizen, a United States national, or an alien who qualifies under §382.9(g) of this subchapter (relating to Application and Renewal Procedures);

(5) resides in Texas;

(6) does not currently receive benefits through a Medicaid program, Children's Health Insurance Program, or Medicare Part A or B; and

(7) does not have creditable health coverage that covers the services HTW provides, except as specified in subsection (c) of this section.

(b) Age. For purposes of subsection (a)(1)(A) of this section, an applicant is considered 18 years of age on the day of her 18th birthday and 44 years of age through the last day of the month of her 45th birthday. For purposes of subsection (a)(1)(B) of this section, an applicant is considered 15 years of age the first day of the month of her 15th birthday and 17 years of age through the day before her 18th birthday. A female is ineligible for HTW if her application is received the month before her 15th birthday or the month after she turns 45 years of age.

(c) Third-party resources. An applicant with creditable health coverage that would pay for all or part of the costs of covered services may be eligible to receive covered services if she affirms, in a manner satisfactory to HHSC, her belief that a party may retaliate against her or cause physical or emotional harm if she assists HHSC (by providing information or by any other means) in pursuing claims against that third party. An applicant with such creditable health coverage who does not comply with this requirement is ineligible to receive HTW benefits.

(d) Period of eligibility. A client is deemed eligible to receive covered services for 12 continuous months after her application is approved, unless:

- (1) the client dies;
- (2) the client voluntarily withdraws;
- (3) the client no longer satisfies criteria set out in subsection (a) of this section;
- (4) state law no longer allows the female to be covered; or
- (5) HHSC determines the client provided information affecting her eligibility that was false at the time of application.

(e) Transfer of eligibility. A female who received services through the Texas Women's Health Program is automatically enrolled as an HTW client and is eligible to receive covered services for as long as she would have been eligible for the Texas Women's Health Program.

(f) Auto-Enrollment. A female who is receiving Medicaid for pregnant women is enrolled into HTW at the end of her Medicaid for pregnant women certification period. Program coverage begins on the first day following the termination of her Medicaid coverage. A female enrolled into HTW has the option to opt out of receiving HTW. To be auto-enrolled, a female must:

- (1) be 18 to 44 years of age, inclusive, as defined in subsection (b) of this section;
- (2) not be receiving active third-party resources at the time of auto-enrollment; and
- (3) be ineligible for any other Medicaid or CHIP program.

#### §382.9. Application and Renewal Procedures.

(a) Application. A female, or a parent or legal guardian acting on her behalf if she is 15 through 17 years of age, inclusive, may apply for HTW services by completing an application form and providing documentation as required by HHSC.

(1) An applicant may obtain an application in the following ways:

- (A) from a local benefits office of HHSC, an HTW provider's office, or any other location that makes HTW applications available;
- (B) from the HTW or HHSC website;
- (C) by calling 2-1-1; or
- (D) by any other means approved by HHSC.

(2) HHSC accepts and processes every application received through the following means:

- (A) in person at a local benefits office of HHSC;
- (B) by fax;
- (C) through the mail; or
- (D) by any other means approved by HHSC.

(b) Processing timeline. HHSC processes an HTW application by the 45th day after the date HHSC receives the application.

(c) Start of coverage. Program coverage, for females who are not auto-enrolled in accordance with §382.7(f) of this subchapter (relating to Client Eligibility), begins on the first day of the month in which HHSC receives a valid application. For applicants 18 through 44 years of age, inclusive, a valid application has, at a minimum, the applicant's name, address, and signature. For applicants 15 through 17 years of age, inclusive, a valid application has, at a minimum, the applicant's name, address, and the signature of a parent or legal guardian.

(d) Social security number (SSN) required. In accordance with 42 U.S.C. §405(c)(2)(C)(i), HHSC requires an applicant to provide or apply for a social security number. If an applicant is not eligible to receive an SSN, the applicant must provide HHSC with any documents requested by HHSC to verify the applicant's identity. HHSC requests, but does not require, budget group members who are not applying for HTW to provide or apply for an SSN.

(e) Interviews. HHSC does not require an interview for purposes of an eligibility determination. An applicant may, however, request an interview for an initial or renewal application.

(f) Identity. An applicant must verify her identity the first time she applies to receive covered services.

(g) Citizenship. If an applicant is a United States citizen, she must provide proof of citizenship. If the applicant, who is otherwise eligible to receive HTW services, is not a United States citizen, HHSC determines her eligibility in accordance with §366.513 of this title (relating to Citizenship). Citizenship is only verified once, unless HHSC receives conflicting information related to citizenship. If an applicant's citizenship has already been verified by HHSC for eligibility for Medicaid or HTW, the applicant is not required to re-verify her citizenship.

(h) Renewal. A female, or a parent or legal guardian acting on her behalf if she is 15 through 17 years of age, inclusive, may renew HTW services by completing a renewal form and providing documentation as required by HHSC.

(1) An HTW client will be sent a renewal packet during the 10th month of her 12-month certification period for HTW.

(2) HHSC accepts and processes every renewal form received through the following means:

- (A) in person at a local benefits office of HHSC;
- (B) by fax;
- (C) through the mail; or
- (D) by any other means approved by HHSC.

#### §382.15. Covered and Non-covered Services.

(a) Covered services. Services provided through HTW include:

- (1) health history and physical;
- (2) counseling and education;
- (3) laboratory testing;

- (4) provision of a contraceptive method;
- (5) pregnancy tests;
- (6) sexually transmitted infection screenings and treatment;
- (7) referrals for additional services, as needed;
- (8) immunizations;
- (9) breast and cervical cancer screening and diagnostic services; and
- (10) other services subject to available funding.

(b) Non-covered services. Services not provided through HTW include:

- (1) counseling on and provision of abortion services;
- (2) counseling on and provision of emergency contraceptives; and
- (3) other services that cannot be appropriately billed with a permissible procedure code.

§382.17. *Health-Care Providers.*

(a) Procedures. An HTW provider must:

- (1) be enrolled as a Medicaid provider in accordance with Chapter 352 of this title (relating to Medicaid and Children's Health Insurance Program Provider Enrollment);
- (2) complete the HTW certification process as described in subsection (e) of this section; and
- (3) comply with the requirements set out in Chapter 354, Subchapter A, Division 1 of this title (relating to Medicaid Procedures for Providers).

(b) Requirements. An HTW provider must ensure that:

- (1) the HTW provider does not perform or promote elective abortions outside the scope of HTW and is not an affiliate of an entity that performs or promotes elective abortions; and

(2) in offering or performing an HTW service, the HTW provider:

(A) does not promote elective abortion within the scope of HTW;

(B) maintains physical and financial separation between its HTW activities and any elective abortion-performing or abortion-promoting activity, as evidenced by the following:

(i) physical separation of HTW services from any elective abortion activities, no matter what entity is responsible for the activities;

(ii) a governing board or other body that controls the HTW provider has no board members who are also members of the governing board of an entity that performs or promotes elective abortions;

(iii) accounting records that confirm that none of the funds used to pay for HTW services directly or indirectly support the performance or promotion of elective abortions by an affiliate; and

(iv) display of signs and other media that identify HTW and the absence of signs or materials promoting elective abortion in the HTW provider's location or in the HTW provider's public electronic communications; and

(C) does not use, display, or operate under a brand name, trademark, service mark, or registered identification mark of an organization that performs or promotes elective abortions.

(c) Defining "promote." For purposes of subsection (b) of this section, the term "promote" means advancing, furthering, advocating, or popularizing elective abortion by, for example:

(1) taking affirmative action to secure elective abortion services for an HTW client (such as making an appointment, obtaining consent for the elective abortion, arranging for transportation, negotiating a reduction in an elective abortion health-care provider fee, or arranging or scheduling an elective abortion procedure); however, the term does not include providing upon the patient's request neutral, factual information and nondirective counseling, including the name, address, telephone number, and other relevant information about a health-care provider;

(2) furnishing or displaying to an HTW client information that publicizes or advertises an elective abortion service or health-care provider; or

(3) using, displaying, or operating under a brand name, trademark, service mark, or registered identification mark of an organization that performs or promotes elective abortions.

(d) Compliance information. Upon request, an HTW provider must provide HHSC with all information HHSC requires to determine the HTW provider's compliance with this section.

(e) Certification. Upon initial application for enrollment in HTW, a health-care provider must certify its compliance with subsection (b) of this section and any other requirement specified by HHSC. Each health-care provider enrolled in HTW must annually certify that the HTW provider complies with subsection (b) of this section.

(f) HTW provider disqualification. If HHSC determines that an HTW provider fails to comply with subsection (b) of this section, HHSC disqualifies the HTW provider from HTW.

(g) Client assistance and recoupment. If an HTW provider is disqualified, HHSC takes appropriate action to:

(1) assist an HTW client to find an alternate HTW provider; and

(2) recoup any funds paid to a disqualified HTW provider for HTW services performed during the period of disqualification.

(h) Exemption from initial certification. The initial application requirement of subsection (g) of this section does not apply to a health-care provider that certified and was determined to be in compliance with the requirements of the Texas Women's Health Program administered by HHSC pursuant to Texas Human Resources Code §32.024(c-1).

§382.21. *Reimbursement.*

(a) Reimbursement.

(1) Covered services provided through HTW are reimbursed in accordance with Chapter 355 of this title (relating to Reimbursement Rates).

(2) Entities that contract with HHSC to provide additional services related to HTW that are separate from services referenced in paragraph (1) of this subsection are reimbursed by HHSC in compliance with program standards, policy and procedures, and contract requirements unless payment is prohibited by law.

(b) Claims procedures. An HTW provider must comply with Chapter 354, Subchapter A, Divisions 1 and 5 of this title (relating

to Medicaid Procedures for Providers and relating to Physician and Physician Assistant Services).

(c) Improper use of reimbursement. An HTW provider may not use any HTW funds received to pay the direct or indirect costs (including overhead, rent, phones, equipment, and utilities) of elective abortions.

(d) An HTW provider may not seek reimbursement from a client and may not deny covered services to a client based on the client's inability to pay.

§382.23. *Health-Care Provider's Request for Review of Claim Denial.*

(a) Review of denied claim. An HTW provider may request a review of a denied claim. The request must be submitted as an administrative appeal under Chapter 354, Subchapter I, Division 3 of this title (relating to Appeals).

(b) Appeal procedures. An administrative appeal is subject to the timelines and procedures set out in Chapter 354, Subchapter I, Division 3 of this title and all other procedures and timelines applicable to a health-care provider's appeal of a Medicaid claim denial.

§382.25. *Confidentiality and Consent.*

(a) Confidentiality required. An HTW provider must maintain all health care information as confidential to the extent required by law.

(b) Written release authorization. Before an HTW provider may release any information that might identify a particular client, that client must authorize the release in writing. If the client is 15 through 17 years of age, inclusive, the client's parent, managing conservator, or guardian, as authorized by Chapter 32 of the Texas Family Code or by federal law or regulations, must authorize the release.

(c) Confidentiality training. An HTW provider's staff (paid and unpaid) must be informed during orientation of the importance of keeping client information confidential.

(d) Records monitoring. An HTW provider must monitor client records to ensure that only appropriate staff and HHSC may access the records.

(e) Assurance of confidentiality. An HTW provider must verbally assure each client that her records are confidential and must explain the meaning of confidentiality.

(f) Consent for minors. HTW services must be provided with consent from the minor's parent, managing conservator, or guardian only as authorized by Texas Family Code, Chapter 32, or by federal law or regulations.

(g) An HTW provider may not require consent for family planning services from the spouse of a married client.

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 June 10, 2016.

TRD-201602927

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Effective date: July 1, 2016

Proposal publication date: March 25, 2016

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



## SUBCHAPTER B. FAMILY PLANNING PROGRAM

**1 TAC §§382.101, 382.103, 382.105, 382.107, 382.109, 382.111, 382.113, 382.115, 382.117, 382.119, 382.121, 382.123, 382.125, 382.127, 382.129**

The Texas Health and Human Service Commission (HHSC) adopts new Chapter 382, Women's Health Services, Subchapter B, Family Planning Program, §382.101, concerning Introduction; §382.103, concerning Non-entitlement and Availability; §382.105, concerning Definitions; §382.107, concerning Client Eligibility; §382.109, concerning Financial Eligibility Requirements; §382.111, concerning Denial, Suspension, or Termination of Services and Client Appeals; §382.113, concerning Covered and Non-covered Services; §382.115, concerning Family Planning Program Health-Care Providers; §382.117, concerning Prohibition of Abortion; §382.119, concerning Reimbursement; §382.121, concerning Provider's Request for Review of Claim Denial; §382.123, concerning Records Retention; §382.125, concerning Confidentiality and Consent; §382.127, concerning FPP Services for Minors; and §382.129, concerning Severability. Sections 382.101, 382.103, 382.107, 382.109, 382.111, 382.117 and 382.123 are adopted without changes to the proposed text as published in the March 25, 2016, issue of the *Texas Register* (41 TexReg 2270) and will not be republished. Section 382.105, 382.113, 382.115, 382.119, 382.121, 382.125, 382.127 and 382.129 are adopted with changes to the proposed text as published in the March 25, 2016, issue of the *Texas Register* (41 TexReg 2270). The text of the rules will be republished.

### BACKGROUND AND JUSTIFICATION

The new rules allow for the HHSC Family Planning Program (FPP) to provide statewide family planning services to low-income women and men who do not have other sources of payment for services. A male or female is eligible to receive services through the FPP if he or she is 64 years of age or younger, resides in Texas, and is at or below 250 percent of the federal poverty level for the household. Family planning services include preventive health, medical services, counseling, and educational services.

In 2014, the Sunset Advisory Commission reviewed the Texas Health and Human Services agencies, including the Family Planning Program. The Sunset Advisory Commission issued the recommendation that the Family Planning Program transfer from the Texas Department of State Health Services (DSHS) to HHSC. In response to the Sunset Advisory Commission's recommendation, the 84th Texas Legislature enacted Texas Government Code §531.0201(a)(2)(C) to transfer client services functions performed by DSHS to HHSC. Texas Government Code §531.0204 was also enacted to require the HHSC Executive Commissioner to develop a transition plan to include an outline of HHSC's reorganized structure, and a definition for "client services functions."

The 2016-17 General Appropriations Act, House Bill 1, 84th Legislature, Regular Session, 2015, merged the women's health strategies (DSHS Strategy B.1.3., Family Planning Services, and Strategy B.1.4., Community Primary Care Services) into a single strategy within the HHSC Budget (HHSC Strategy D.2.3., Women's Health Services).

The transition plan developed by HHSC pursuant to Texas Government Code §531.0204 included the transfer of the Family

Planning Program from DSHS to HHSC as of September 1, 2015. On July 1, 2016, HHSC plans to begin a new procurement period for the Family Planning Program, which will continue to be fully funded by state general revenue for client services. Some federal Title XX (Social Services Block Grant) funds are used for administrative costs.

#### COMMENTS

The 30-day comment period ended April 26, 2016. During this period, HHSC received comments regarding the new rules from three entities. A summary of comments relating to the rules and HHSC's responses follows.

HHSC received comments in support of the proposed rules, either in whole or in part from the following entities: Texans Care for Children, the Texas Association of Community Health Centers, and the Texas Women's Healthcare Coalition.

HHSC received comments opposed to the proposed rules, either in whole or in part from the following entities: Texans Care for Children, the Texas Association of Community Health Centers, and the Texas Women's Healthcare Coalition.

HHSC received comments from the following entities requesting changes to the proposed rules: Texans Care for Children, the Texas Association of Community Health Centers, and the Texas Women's Healthcare Coalition.

#### General Comments:

Comment: One commenter stated that the Family Planning Program does not qualify as "minimum essential coverage" as required by the Affordable Care Act. As such, the commenter suggested that HHSC take all steps necessary to ensure that clients eligible for Medicaid or for coverage under the Health Insurance Marketplace are informed that enrollment in the Family Planning Program will not prevent a tax penalty.

Response: HHSC is not able to implement this requirement as it is beyond the scope of the HTW program rules. HHSC does not have the authority to determine what qualifies as "minimum essential coverage" or what will prevent a tax penalty under the Affordable Care Act.

Comment: A commenter suggested including provisions regarding civil rights, freedom from coercion, and child abuse reporting including requiring providers to develop a policy for Human Anti-Trafficking and Intimate Partner Violence.

Response: HHSC declines to make this revision. All Family Planning Program providers have a legal obligation to comply with existing federal and state statute and regulations laws, including those addressing civil rights, freedom from coercion, and child abuse reporting. HHSC declines to restate these legal obligations in Family Planning Program rules.

#### §382.101: Introduction

HHSC did not receive any public comments regarding this proposed rule.

#### §382.103: Non-entitlement and Availability

HHSC did not receive any public comments regarding this proposed rule.

#### §382.105: Definitions

Comment: A commenter suggested expanding the definition of "contraceptive method" to include any pregnancy prevention method approved by the United States Food and Drug Adminis-

tration (FDA). The commenter further recommended stating that all FDA-approved contraceptive methods must be made available to a client either directly (preferably on-site) or by referral. The commenter clarified that not all brands of FDA-approved contraceptive methods need to be made available, but that each major contraceptive category must be made available.

Response: Although the current definition of "contraceptive method" is intended to include any pregnancy prevention method approved by the FDA, except emergency contraception, the rule language in §382.105(5) has been amended to include clearer language. The rule will be republished.

#### §382.107: Client Eligibility

Comment: A commenter suggested adding to rule that providers should not deny family planning services to eligible clients because of their inability to pay for services. The commenter further stated that Title XIX (Medicaid) eligibility is determined by the guidelines set by the commission, and that individuals who receive Medicaid are eligible for family planning medical, counseling, and educational services.

Response: HHSC agrees that a Family Planning Program client should not be denied services due to an inability to pay. HHSC has added subsection (d) to §382.119 (relating to Reimbursement) to include this provision. The rule will be republished.

Additionally, it is correct that there are certain situations in which an individual receiving Medicaid may still be eligible to receive Family Planning Program covered services if the individual is otherwise eligible for the Family Planning Program. The Family Planning Program rules do not prevent an individual from Family Planning Program eligibility based solely on the fact that they receive Medicaid services.

#### §382.109: Financial Eligibility Requirements

Comment: One commenter suggested making the financial eligibility requirements identical for both the Healthy Texas Women program and the Family Planning Program.

Response: HHSC declines to make this revision. Healthy Texas Women (HTW) and the Family Planning Program are designed to offer unique services to distinct populations. Specifically, HTW will serve clients historically covered by the Expanded Primary Health Care (EPHC) program and the Texas Women's Health Program (TWHP), which differs from the population served by the Family Planning Program.

Comment: One commenter suggested excluding child support payments from the calculation of countable income for Family Planning Program financial eligibility determination.

Response: HHSC agrees with this comment. It is specified in §382.109(2)(C) that child support payments are not included by HHSC when determining countable income.

#### §382.111: Denial, Suspension, or Termination of Services and Client Appeals

HHSC did not receive any public comments regarding this proposed rule.

#### §382.113: Covered and Non-covered Services

Comment: Several commenters suggested that the list of covered services should be more comprehensive. One commenter suggested adding screening and treatment for hypertension, diabetes, postpartum depression, and other preconception and inter-conception care including mental health screening, obesity

screening, nutrition counseling and education, and smoking and tobacco cessation counseling. Commenters suggested adding additional details surrounding family planning exams, follow-up visits related to the chosen contraceptive methods, sterilization, follow-up visits related to sterilization including procedures to confirm sterilization, counseling on specific methods and use of contraception, pregnancy testing, screening and treatment for sexually transmitted infection, screening for diabetes mellitus, screening for hypercholesterolemia, and other treatment options. One commenter also suggested including details surrounding the removal of temporary contraceptive methods.

Response: HHSC agrees that more detail should be included in the Covered and Non-covered Services section and has revised the rules to include pregnancy testing and sexually transmitted infection screening and treatment as covered services included in the program. HHSC has also included a statement that other services are covered subject to available funding to clarify that the list of covered services in §382.113 is not an exhaustive list of covered services in the Family Planning Program.

Comment: Several commenters suggested removing counseling on and provision of emergency contraceptives as a non-covered service.

Response: HHSC declines to make this revision. Services covered by the Family Planning Program are provided subject to available state general revenue funds. At this time, HHSC has chosen to include emergency contraception as a non-covered service.

#### §382.115: Health-Care Providers

Comment: One commenter stated that HHSC should take all necessary steps to reduce administrative barriers to program enrollment and take steps to increase provider enrollment.

Response: HHSC agrees that Family Planning Program provider enrollment should be as streamlined as possible in order to increase Family Planning Program provider enrollment across the state. HHSC will conduct several trainings statewide to recruit and retain Family Planning Program providers, and will also offer technical assistance to providers to ensure that the enrollment process is efficient and accurate.

#### §382.117: Prohibition of Abortion

HHSC did not receive any public comments regarding this proposed rule.

#### §382.119: Reimbursement

HHSC did not receive any public comments regarding this proposed rule.

#### §382.121: Provider's Request for Review of Claim Denial

HHSC did not receive any public comments regarding this proposed rule.

#### §382.123: Records Retention

HHSC did not receive any public comments regarding this proposed rule.

#### §382.125: Confidentiality and Consent

Comment: A commenter suggested excluding reports of child abuse from the written release authorization provision.

Response: HHSC agrees that Family Planning Program providers have a legal obligation to report suspected child abuse and neglect. As required by the Texas Medicaid Provider

Agreement, which all Family Planning Program providers must sign, all Family Planning Program providers must comply with federal and state laws regarding reporting suspected child abuse. Proposed §382.125(b) does not supersede existing legal obligations to report child abuse, and HHSC declines to include reporting obligations in the program rules.

Comment: A commenter suggested adding to rule that providers may not require consent for family planning services from the spouse of a married client.

Response: HHSC agrees that a client does not need consent from a spouse to receive family planning services, and has added subsection (g) to §382.125 to include this provision. The rule will be republished.

#### §382.127: FPP Services for Minors

HHSC did not receive any public comments regarding this proposed rule.

#### §382.129: Severability

HHSC did not receive any public comments regarding this proposed rule.

#### OTHER CHANGES

The following non-substantial changes were made that were not in response to the comments received:

Proposed rule §382.105 was updated to remove the definition of "provider" since "health-care provider" is already defined as a term in program rule.

A definition was added for "Family Planning Program (FPP) health-care provider." The term "provider" was updated throughout the rule text to "health-care provider" or "FPP health-care provider" as appropriate for consistency purposes.

Section 382.129(c)(1) is adopted with a change to update the reference to the section title of §382.115.

#### STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority to adopt rules necessary to carry out the commission's duties under Chapter 531.

#### §382.105. Definitions.

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

##### (1) Affiliate--

(A) An individual or entity that has a legal relationship with another entity, which relationship is created or governed by at least one written instrument that demonstrates:

(i) common ownership, management, or control;

(ii) a franchise; or

(iii) the granting or extension of a license or other agreement that authorizes the affiliate to use the other entity's brand name, trademark, service mark, or other registered identification mark.

(B) The written instruments referenced in subparagraph (A) of this definition may include a certificate of formation, a franchise agreement, standards of affiliation, bylaws, articles of incorporation or a license, but do not include agreements related to a physician's participation in a physician group practice, such as a hospital group

agreement, staffing agreement, management agreement, or collaborative practice agreement.

(2) Applicant--An individual applying to receive services under FPP, including a current client who is applying to renew.

(3) Budget group--Members of a household whose needs, income, resources, and expenses are considered in determining eligibility.

(4) Client--Any individual seeking assistance from an FPP health-care provider to meet their family planning goals.

(5) Contraceptive method--Any birth control option approved by the United States Food and Drug Administration, with the exception of emergency contraception.

(6) Contractor--An entity that HHSC has contracted with to provide services. The contractor is the responsible entity, even if a subcontractor provides the service.

(7) Corporate entity--A foreign or domestic non-natural person, including a for-profit or nonprofit corporation, a partnership, or a sole proprietorship.

(8) Covered service--A medical procedure for which FPP will reimburse a contracted health-care provider.

(9) Elective abortion--The intentional termination of a pregnancy by an attending physician who knows that the female is pregnant, using any means that is reasonably likely to cause the death of the fetus. The term does not include the use of any such means:

(A) to terminate a pregnancy that resulted from an act of rape or incest;

(B) in a case in which a female suffers from a physical disorder, physical disability, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy, that would, as certified by a physician, place the female in danger of death or risk of substantial impairment of a major bodily function unless an abortion is performed; or

(C) in a case in which a fetus has a life-threatening physical condition that, in reasonable medical judgment, regardless of the provision of life-saving treatment, is incompatible with life outside the womb.

(10) Family Planning Program (FPP)--The non-Medicaid program administered by HHSC as outlined in this subchapter.

(11) Family Planning Program health-care provider--A health-care provider that is contracted with HHSC and qualified to perform covered services.

(12) Family planning services--Educational or comprehensive medical activities that enable individuals to determine freely the number and spacing of their children and to select the means by which this may be achieved.

(13) Federal poverty level--The household income guidelines issued annually and published in the *Federal Register* by the United States Department of Health and Human Services.

(14) Health-care provider--A physician, physician assistant, nurse practitioner, clinical nurse specialist, certified nurse midwife, federally qualified health center, family planning agency, health clinic, ambulatory surgical center, hospital ambulatory surgical center, laboratory, or rural health center.

(15) Health clinic--A corporate entity that provides comprehensive preventive and primary health care services to outpatient

clients, which must include both family planning services and diagnosis and treatment of both acute and chronic illnesses and conditions in three or more organ systems. The term does not include a clinic specializing in family planning services.

(16) HHSC--The Texas Health and Human Services Commission or its designee.

(17) Medicaid--The Texas Medical Assistance Program, a joint federal and state program provided for in Texas Human Resources Code Chapter 32, and subject to Title XIX of the Social Security Act, 42 U.S.C. §1396 et seq.

(18) Minor--In accordance with the Texas Family Code, a person under 18 years of age who has never been married and never been declared an adult by a court (emancipated).

(19) Point of Service--The location where an individual can receive FPP services.

(20) Third-party resource--A person or organization, other than HHSC or a person living with the applicant or client, who may be liable as a source of payment of the applicant's or client's medical expenses (for example, a health insurance company).

(21) Unintended pregnancy--Pregnancy a female reports as either mistimed or undesired at the time of conception.

(22) U.S.C.--United States Code.

§382.113. *Covered and Non-covered Services.*

(a) Covered services. Services provided through FPP include:

- (1) health history and physical;
- (2) counseling and education;
- (3) laboratory testing;
- (4) provision of a contraceptive method;
- (5) pregnancy tests;
- (6) sexually transmitted infection screenings and treatment;
- (7) referrals for additional services, as needed;
- (8) immunizations;
- (9) breast and cervical cancer screening and diagnostic services;
- (10) prenatal services; and
- (11) other services subject to available funding.

(b) Non-covered services. Services not provided through FPP include:

- (1) counseling on and provision of abortion services;
- (2) counseling on and provision of emergency contraceptives; and
- (3) other services that cannot be appropriately billed with a permissible procedure code.

§382.115. *Family Planning Program Health-Care Providers.*

(a) Procedures. An FPP health-care provider must:

- (1) be enrolled as a Medicaid provider in accordance with Chapter 352 of this title (relating to Medicaid and Children's Health Insurance Program Provider Enrollment);
- (2) must complete the FPP certification process as described in subsection (g) of this section; and

(3) must comply with the requirements set out in Chapter 354, Subchapter A, Division 1 of this title (relating to Medicaid Procedures for Providers).

(b) Requirements. An FPP health-care provider must ensure that:

(1) the FPP health-care provider does not perform or promote elective abortions outside the scope of FPP and is not an affiliate of an entity that performs or promotes elective abortions; and

(2) in offering or performing an FPP service, the FPP health-care provider:

(A) does not promote elective abortion within the scope of FPP;

(B) maintains physical and financial separation between its FPP activities and any elective abortion-performing or abortion-promoting activity, as evidenced by the following:

(i) physical separation of FPP services from any elective abortion activities, no matter what entity is responsible for the activities;

(ii) a governing board or other body that controls the FPP health-care provider has no board members who are also members of the governing board of an entity that performs or promotes elective abortions;

(iii) accounting records that confirm that none of the funds used to pay for FPP services directly or indirectly support the performance or promotion of elective abortions by an affiliate; and

(iv) display of signs and other media that identify FPP services and the absence of signs or materials promoting elective abortion in the FPP health-care provider's location or in the FPP health-care provider's public electronic communications; and

(C) does not use, display, or operate under a brand name, trademark, service mark, or registered identification mark of an organization that performs or promotes elective abortions.

(c) Defining "promote." For purposes of subsection (b) of this section, the term "promote" means advancing, furthering, advocating, or popularizing elective abortion by, for example:

(1) taking affirmative action to secure elective abortion services for an FPP client (such as making an appointment, obtaining consent for the elective abortion, arranging for transportation, negotiating a reduction in an elective abortion provider fee, or arranging or scheduling an elective abortion procedure); however, the term does not include providing upon the patient's request neutral, factual information and nondirective counseling, including the name, address, telephone number, and other relevant information about a health-care provider;

(2) furnishing or displaying to an FPP client information that publicizes or advertises an elective abortion service or health-care provider; or

(3) using, displaying, or operating under a brand name, trademark, service mark, or registered identification mark of an organization that performs or promotes elective abortions.

(d) Compliance information. Upon request, an FPP health-care provider must provide HHSC with all information HHSC requires to determine the provider's compliance with this section.

(e) Certification. Upon initial application for enrollment in FPP, an FPP contractor must certify its compliance with subsection (b) of this section and any other requirement specified by HHSC. Each FPP

contractor must annually certify that the contractor complies with subsection (b) of this section.

(f) Provider disqualification. If HHSC determines that an FPP health-care provider fails to comply with subsection (b) of this section, HHSC disqualifies the FPP health-care provider from providing FPP services under this subchapter.

(g) Client assistance and recoupment. If an FPP health-care provider is disqualified from providing FPP services under this subchapter, HHSC takes appropriate action to:

(1) assist an FPP client to find an alternate health-care provider; and

(2) recoup any funds paid to a disqualified provider for FPP services performed during the period of disqualification.

§382.119. *Reimbursement.*

(a) Reimbursement.

(1) Covered services provided through FPP are reimbursed in accordance with Chapter 355 of this title (relating to Reimbursement Rates).

(2) Entities that contract with HHSC to provide additional services related to family planning that are separate from services referenced in paragraph (1) of this subsection are reimbursed by HHSC in compliance with program standards, policy and procedures, and contract requirements unless payment is prohibited by law.

(b) Claims procedures. An FPP health-care provider must comply with Chapter 354, Subchapter A, Divisions 1 and 5 of this title (relating to Medicaid Procedures for Providers and relating to Physician and Physician Assistant Services).

(c) Improper use of reimbursement. An FPP health-care provider may not use any FPP funds received to pay the direct or indirect costs (including overhead, rent, phones, equipment, and utilities) of elective abortions.

(d) An FPP health-care provider may not deny covered services to a client based on the client's inability to pay.

§382.121. *Provider's Request for Review of Claim Denial.*

(a) Review of denied claim. An FPP health-care provider may request a review of a denied claim. The request must be submitted as an administrative appeal under Chapter 354, Subchapter I, Division 3 of this title (relating to Appeals).

(b) Appeal procedures. An administrative appeal is subject to the timelines and procedures set out in Chapter 354, Subchapter I, Division 3 of this title and all other procedures and timelines applicable to an FPP health-care provider's appeal of a Medicaid claim denial.

§382.125. *Confidentiality and Consent.*

(a) Confidentiality required. An FPP health-care provider must maintain all health care information as confidential to the extent required by law.

(b) Written release authorization. Before an FPP health-care provider may release any information that might identify a particular client, that client must authorize the release in writing. If the client is a minor, the client's parent, managing conservator, or guardian, as authorized by Chapter 32 of the Texas Family Code or by federal law or regulations, must authorize the release.

(c) Confidentiality training. An FPP health-care provider's staff (paid and unpaid) must be informed during orientation of the importance of keeping client information confidential.

(d) Records monitoring. An FPP health-care provider must monitor client records to ensure that only appropriate staff and HHSC may access the records.

(e) Assurance of confidentiality. An FPP health-care provider must verbally assure each client that her records are confidential and must explain the meaning of confidentiality.

(f) Consent for minors. FPP services must be provided with consent from the minor's parent, managing conservator, or guardian only as authorized by Texas Family Code, Chapter 32, or by federal law or regulations.

(g) A FPP health-care provider may not require consent for family planning services from the spouse of a married client.

§382.127. *FPP Services for Minors.*

(a) Minors must be provided individualized family planning counseling and family planning medical services that meet their specific needs as soon as possible.

(b) The FPP health-care provider must ensure that:

(1) counseling for minors seeking family planning services is provided with parental consent;

(2) counseling for minors includes information on use and effectiveness of all medically approved birth control methods, including abstinence; and

(3) appointment schedules are flexible enough to accommodate access for minors requesting services.

§382.129. *Severability.*

(a) Legislative intent. It is the intent of the Texas Legislature that FPP must be operated only in a manner that ensures that no funds spent under the program are used to:

(1) perform or promote elective abortions; or

(2) contract with entities that perform or promote elective abortions or affiliates of such entities.

(b) Limitation on administration. HHSC, as the agency responsible for administering FPP, is subject to the conditions specified in state law and legislative appropriations. Its authority to operate the program is thus strictly limited, and HHSC has no authority to operate FPP except in compliance with such conditions.

(c) Nonseverable provisions.

(1) Section 382.105(1) of this subchapter (relating to Definitions) and §382.115 of this subchapter (relating to Family Planning Program Health Care Providers) are necessary and integral to the implementation of the requirements of state law and legislative appropriations and the achievement of the objectives of FPP. As such, HHSC regards the provisions and application of these sections as essential aspects of HHSC's compliance with state law and, therefore, not severable from the other provisions of this subchapter.

(2) Accordingly, to the extent that §382.105(1), §382.115, or this section is determined by a court of competent jurisdiction to be unconstitutional or unenforceable, or to the degree an official or employee of HHSC or the State of Texas is enjoined from enforcing these sections, HHSC will regard this entire subchapter as invalid and unenforceable and will cease operation of the program.

(d) Severable provisions. To the extent that any part of this subchapter other than §382.105(1), §382.115, or this section are enjoined, HHSC may enforce the parts of the subchapter not affected by such injunctive relief to the extent that HHSC determines it can do so consistent with legislative intent and the objectives 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.

Filed with the Office of the Secretary of State on June 10, 2016.

TRD-201602932

Karen Ray  
Chief Counsel

Texas Health and Human Services Commission

Effective date: July 1, 2016

Proposal publication date: March 25, 2016

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



## TITLE 7. BANKING AND SECURITIES

### PART 1. FINANCE COMMISSION OF TEXAS

#### CHAPTER 1. CONSUMER CREDIT REGULATION

##### SUBCHAPTER B. INTERPRETATIONS AND ADVISORY LETTERS

###### 7 TAC §1.201

The Finance Commission of Texas (commission) adopts amendments to §1.201, concerning Interpretations and Advisory Letters.

The commission adopts the amendments without changes to the proposed text as published in the April 29, 2016, issue of the *Texas Register* (41 TexReg 3032).

In general, the purpose of the amendments to §1.201 is to implement changes resulting from the commission's review of Chapter 1 under Texas Government Code, §2001.039. The notice of intention to review 7 TAC Part 1, Chapter 1 was published in the *Texas Register* on March 11, 2016 (41 TexReg 1980). The agency did not receive any comments on the notice of intention to review.

Overall, the adopted changes provide clarification, improved grammar, better readability, and technical corrections. The purposes of amendments to individual subsections are provided in the following paragraphs.

In subsection (a), the adoption includes a new definition of the term "advisory letter." The definition identifies certain documents that are not advisory letters, such as official interpretations, advisory bulletins, and letters sent in connection with an examination or license application.

In subsection (a), the adoption also amends the definition of "interpretation" to use the term "official interpretation." This reflects the agency's convention of referring to interpretations issued under Texas Finance Code, §14.108 as "official interpretations," and helps avoid confusion with other types of statements that the agency issues. Subsections (a), (b), and (c) contain conforming changes to replace "interpretation" with "official interpretation," and to improve readability and clarity.

In subsection (d), the adoption includes new text for the notice that appears on advisory letters interpreting Texas Finance

Code, Title 4, Subtitle A or B. The new text is intended to improve readability and clarity.

The commission received no written comments on the proposal.

The amendments are adopted under Texas Finance Code, §11.304, which authorizes the commission to propose rules to enforce Chapter 14 and Title 4 of the Texas Finance Code. In addition, the adopted amendment to subsection (b)(4) is authorized under Texas Finance Code, §14.107(a), which authorizes the commission to establish reasonable and necessary fees for carrying out the commissioner's powers under Chapter 14.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, Chapter 14 and Title 4.

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 June 10, 2016.

TRD-201602941

Leslie L. Pettijohn

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Finance Commission of Texas

Effective date: June 30, 2016

Proposal publication date: April 29, 2016

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## PART 2. TEXAS DEPARTMENT OF BANKING

### CHAPTER 24. CEMETERY BROKERS

#### 7 TAC §24.1

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §24.1, concerning registration of cemetery brokers, without changes to the proposed text as published in the April 29, 2016, issue of the *Texas Register* (41 TexReg 3033). The amended rule will not be republished. The amendments specify times for department processing of cemetery broker registrations.

In 2013, the Texas Legislature passed House Bill 52, which required cemetery brokers to register with the department. The rules stating requirements for registration of these entities were adopted in December 2013, by the commission in the form of 7 TAC Chapter 24. The amendments to §24.1 reduce from 45 days to 15 days the amount of time the department has to notify a registrant whether the registration is complete, and state that the department will process registrations within 30 days of the department's notification that the registration has been accepted for filing.

The department received no comments regarding the proposed amendments.

The amended rule is adopted pursuant to Health and Safety Code, §711.012 and §711.0381, which provide the authority to adopt rules regarding registration of cemetery brokers with the banking commissioner.

Health and Safety Code, §711.046 is affected by the amended 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 June 10, 2016.

TRD-201602935

Catherine Reyer

General Counsel

Texas Department of Banking

Effective date: June 30, 2016

Proposal publication date: April 29, 2016

For further information, please call: (512) 475-1301



#### 7 TAC §24.4

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts new §24.4, concerning appeal of processing time for cemetery broker registrations, without changes to the proposed text as published in the April 29, 2016, issue of the *Texas Register* (41 TexReg 3034). The new rule will not be republished. This rule provides a procedure for registrants to complain to the banking commissioner in the event the registration is not processed within the prescribed time periods. The new rule conforms to Texas Government Code §2005.006.

In 2013, the Texas Legislature passed House Bill 52, which required cemetery brokers to register with the department. The rules stating requirements for registration of these entities were adopted in December 2013, by the commission in the form of 7 TAC Chapter 24. New §24.4 establishes the process by which an entity seeking to register as a cemetery broker may complain to the banking commissioner if the department fails to comply with the registration processing times specified in §24.1.

The department received no comments regarding the proposed new rule.

The new rule is adopted under Health and Safety Code, §711.012 and §711.0381, which provide the authority to adopt rules regarding registration of cemetery brokers with the banking commissioner.

Health and Safety Code, §711.046 is affected by the new 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 June 10, 2016.

TRD-201602936

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Effective date: June 30, 2016

Proposal publication date: April 29, 2016

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## CHAPTER 31. PRIVATE CHILD SUPPORT ENFORCEMENT AGENCIES

## SUBCHAPTER B. HOW DO I REGISTER MY AGENCY TO ENGAGE IN THE BUSINESS OF CHILD SUPPORT ENFORCEMENT?

### 7 TAC §31.18

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §31.18, concerning when an application is abandoned, without changes to the proposed text as published in the April 29, 2016, issue of the *Texas Register* (41 TexReg 3035). The amended rule will not be republished. These amendments clarify the conditions and procedures for determining and communicating that an application has been abandoned.

The amended rule streamlines and makes consistent the procedures for the department to determine whether an application has been abandoned. These amendments are intended to enhance the opportunity for communication between child support enforcement agency applicants and the department.

The department received no comments regarding the proposed amendments.

The amendments are adopted pursuant to Finance Code, §396.051, which authorizes the commission to adopt necessary rules to administer the chapter concerning private child support enforcement agencies.

Finance Code, §396.101, is affected by the amended 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 June 10, 2016.

TRD-201602937

Catherine Reyer

General Counsel

Texas Department of Banking

Effective date: June 30, 2016

Proposal publication date: April 29, 2016

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### 7 TAC §31.19

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §31.19, concerning how to register an agency to engage in the business of private child support enforcement, without changes to the proposed text as published in the April 29, 2016, issue of the *Texas Register* (41 TexReg 3036). The amended rule will not be republished. These amendments clarify the time for department processing of private child support enforcement agency registrations.

The amended rule reduces from 60 days to 45 days the time the department will have to notify a registrant that its registration is approved or referred to the administrative law judge for notice and opportunity for hearing. These amendments are intended to shorten and simplify the registration process for registrants seeking to engage in this business.

The department received no comments regarding the proposed amendments.

The amendments are adopted pursuant to Finance Code, §396.051, which authorizes the Commission to adopt necessary rules to administer the chapter concerning private child support enforcement agencies.

Finance Code, §396.101, is affected by the amended 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 June 10, 2016.

TRD-201602938

Catherine Reyer

General Counsel

Texas Department of Banking

Effective date: June 30, 2016

Proposal publication date: April 29, 2016

For further information, please call: (512) 475-1301



### 7 TAC §31.20

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts new §31.20, concerning how to register an agency to engage in the business of private child support enforcement, without changes to the proposed text as published in the April 29, 2016, issue of the *Texas Register* (41 TexReg 3036). The new rule will not be republished. This rule provides a procedure for registrants to complain to the banking commissioner in the event the registration is not processed within the prescribed time periods. The new rule conforms to Texas Government Code §2005.006.

New §31.20 establishes the process by which an entity seeking to register as a private child support enforcement agency may complain to the banking commissioner if the department fails to comply with the application processing time periods specified in Subchapter B.

The department received no comments regarding the proposed new rule.

The new rule is adopted pursuant to Finance Code, §396.051, which authorizes the commission to adopt necessary rules to administer the chapter concerning private child support enforcement agencies.

Finance Code, §396.101, is affected by the new 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 June 10, 2016.

TRD-201602939

Catherine Reyer

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Texas Department of Banking

Effective date: June 30, 2016

Proposal publication date: April 29, 2016

For further information, please call: (512) 475-1301



## CHAPTER 35. CHECK VERIFICATION ENTITIES

### SUBCHAPTER B. REGISTRATION OF CHECK VERIFICATION ENTITIES

#### 7 TAC §35.18, §35.19

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts new §35.18 and §35.19, concerning registration of check verification entities, without changes to the proposed text as published in the April 29, 2016, issue of the *Texas Register* (41 TexReg 3037). The new rules will not be republished. These rules specify times for department processing of check verification entity registrations, and provide a procedure for registrants to complain to the banking commissioner in the event the registration is not processed within the prescribed time periods. New §35.19 conforms to Texas Government Code §2005.006.

New §35.18 establishes specific time periods within which the department will process registrations for check verification entities. New §35.19 establishes the process by which an entity seeking to register as a check verification entity may complain to the banking commissioner if the department fails to comply with the registration processing times specified in new §35.18.

The department received no comments regarding the proposed new rules.

The new rules are adopted pursuant to Finance Code, §11.309(b), which provides the authority to adopt rules requiring check verification entities to register with the banking commissioner.

Finance Code, §11.309, is affected by the new sections.

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 June 10, 2016.

TRD-201602940

Catherine Reyer

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Texas Department of Banking

Effective date: June 30, 2016

Proposal publication date: April 29, 2016

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## PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

### CHAPTER 79. RESIDENTIAL MORTGAGE LOAN SERVICERS

#### SUBCHAPTER A. REGISTRATION

##### 7 TAC §79.1, §79.2

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), adopts amendments to §79.1 and §79.2 in 7 Texas Administrative Code Chapter 79, Subchapter A, concerning registration. The agency adopts the rules without changes to the

proposed text as published in the April 29, 2016, issue of the *Texas Register* (41 TexReg 3038). The rules will not be republished.

In general, the purpose of the adoption regarding these rules is to implement changes resulting from the commission's review of Chapter 79, under Texas Government Code §2001.039.

Section 79.1 addresses definitions. The adopted amendments reorganize the terms and defines the Act.

Section 79.2 addresses required disclosures. The adopted amendments emphasize that the required disclosure is only necessary for the servicing of residential mortgage loans on real estate located in Texas. It further requires the posting of the disclosure on the registrant's website.

The department received no comments regarding the proposed amendments.

The amendments are adopted under Texas Finance Code §158.003, which provide that the Finance Commission may adopt rules relating to Residential Mortgage Loan Servicers.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, Chapter 158.

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 June 10, 2016.

TRD-201602928

Ernest C. Garcia

General Counsel

Department of Savings and Mortgage Lending

Effective date: June 30, 2016

Proposal publication date: April 29, 2016

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## CHAPTER 80. TEXAS RESIDENTIAL MORTGAGE LOAN COMPANIES

### SUBCHAPTER A. GENERAL PROVISIONS

#### 7 TAC §80.2

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), adopts amendments to §80.2 in 7 Texas Administrative Code Chapter 80, Subchapter A, concerning definitions, without changes to the proposed text as published in the April 29, 2016, issue of the *Texas Register* (41 TexReg 3038). The rule will not be republished.

In general, the purpose of the adoption regarding this rule is to implement changes resulting from the commission's review of Chapter 80, under Texas Government Code §2001.039.

Section 80.2 addresses definitions. The adopted amendments reorganizes the terms to reflect an alphabetical order, and introduces several new terms to create parity with 7 Texas Administrative Code Chapters 79 (regarding Residential Mortgage Loan Servicers) and 81 (regarding Mortgage Bankers and Residential Mortgage Loan Originators).

The department received no comments regarding the proposed amendments.

The amendments are adopted under Texas Finance Code §156.102, which provides that the Finance Commission may adopt rules relating to Residential Mortgage Loan Companies.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, Chapter 156.

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 June 10, 2016.

TRD-201602929

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Effective date: June 30, 2016

Proposal publication date: April 29, 2016

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## SUBCHAPTER C. DUTIES AND RESPONSIBILITIES

### 7 TAC §80.204, §80.205

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), adopts amendments to §80.204 and §80.205 in 7 Texas Administrative Code Chapter 80, Subchapter C, concerning duties and responsibilities. The agency adopts §80.204 with changes to the proposed text as published in the April 29, 2016, issue of the *Texas Register* (41 TexReg 3040). Section 80.205 is adopted without changes and will not be republished.

In general, the purpose of the adoption regarding these rules is to implement changes resulting from the commission's review of Chapter 80, under Texas Government Code §2001.039.

Section 80.204 addresses books and records. The adopted amendments capitalize "Department" in order to link it to the adopted definition, as adopted in 7 Texas Administrative Code §80.2 and add clarifying language.

Section 80.205 addresses mortgage call reports. The adopted amendment emphasizes that the term "administrative action" includes the assessment of an administrative penalty.

The department received no comments regarding the proposed amendments.

The amendments are adopted under Texas Finance Code §156.102, which provide that the Finance Commission may adopt rules relating to Residential Mortgage Loan Companies.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, Chapter 156.

#### *§80.204. Books and Records.*

(a) In order to assure that each licensee will have all records necessary to enable the Commissioner or the Commissioner's designee to investigate complaints and discharge their responsibilities under Finance Code, Chapter 156 and this chapter, each originator shall maintain records as set forth in this section. The particular format of records to be maintained is not specified. However, they must be accurate, complete, current, legible, readily accessible, and readily sortable. Records maintained for other purposes, such as compliance

with other state and federal laws, will be deemed to satisfy these requirements if they include the same information.

(b) Mortgage Application Records. Each company or originator is required to maintain, at the location specified in their official record on file with the department, the following books and records:

(1) Residential Mortgage Loan File. For each residential mortgage loan application received the residential mortgage loan file shall contain at a minimum the following:

(A) a copy of the initial signed and dated residential mortgage loan application (including any attachments, supplements, or addenda thereto);

(B) either a copy of the signed closing statement or integrated closing disclosure, documentation of the timely denial, or other disposition of the application for a residential mortgage loan;

(C) a copy of the signed and dated disclosure statement required by Finance Code, Chapter 156 and §80.200(a) of this chapter;

(D) a copy of each item of correspondence, all evidence of any contractual agreement or understanding (including, but not limited to, any interest rate lock-ins or loan commitments), and all notes and memoranda of conversations or meetings with any mortgage applicant or any other party in connection with that residential mortgage loan application or its ultimate disposition;

(E) a copy of the notice to applicants required by Finance Code, §343.105;

(F) a copy of both the initial Good Faith Estimate and the initial Good Faith Estimate fee itemization worksheet, if applicable; and

(G) a copy of the initial integrated loan estimate disclosure, if applicable.

(2) Mortgage Transaction Log. A mortgage transaction log, maintained on a current basis (which means that all entries must be made within no more than seven days from the date on which the matters they relate to occurred), setting forth, at a minimum:

(A) name of each mortgage applicant and how to contact them;

(B) date of the initial residential mortgage loan application;

(C) description of the disposition of the application for a residential mortgage loan;

(D) identity of the person or entity who initially funded and/or acquired the residential mortgage loan; and

(E) full name of the originator and their Nationwide Mortgage Licensing System and Registry identification number.

(3) General Business Records. General business records include the following:

(A) all checkbooks, check registers, bank statements, deposit slips, withdrawal slips, and cancelled checks (or copies thereof) relating to the mortgage lending business;

(B) complete records (including invoices and supporting documentation) for all expenses and fees paid on behalf of a mortgage applicant, including a record of the date and amount of all such payments actually made by each mortgage applicant;

(C) copies of all federal tax withholding forms, reports of income for federal taxation, and evidence of payments to all com-

pany employees, independent contractors and all others compensated by such originator in connection with the mortgage lending business;

(D) copies of all written complaints or inquiries (or summaries of any verbal complaints or inquiries) along with any and all correspondence, notes, responses, and documentation relating thereto and the disposition thereof;

(E) copies of all contractual agreements or understandings with third parties in any way relating to mortgage lending services including, but not limited to, any delegations of underwriting authority, any agreements for pricing of goods or services, investor contracts, or employment agreements;

(F) copies of all reports of audits, examinations, inspections, reviews, investigations, or other similar matters performed by any third party, including any regulatory or supervisory authorities; and

(G) copies of all advertisements in the medium (e.g., recorded audio, video, and print) in which they were published or distributed.

(c) A company and/or originator shall maintain such other books and records as may be required to evidence compliance with applicable state and federal laws and regulations including, but not limited to: the Real Estate Settlement Procedures Act, the Equal Credit Opportunity Act, and the Truth in Lending Act.

(d) A company and/or originator shall maintain such other books and records as the Commissioner or the Commissioner's designee may from time to time specify in writing.

(e) All books and records required by this section shall be maintained in good order and shall be produced for the Commissioner or the Commissioner's designee upon request. Failure to produce such books and records upon request, after a reasonable time for compliance, may be grounds for suspension or revocation of a license.

(f) All books and records required by this section shall be maintained for three years or such longer period(s) as may be required by applicable state and/or federal laws and regulations.

(g) An originator may meet applicable recordkeeping requirements if his or her sponsoring company maintains the required records.

(h) Upon termination of operations, the licensee shall notify the Commissioner, in writing, within ten days where the required records will be maintained for the prescribed periods. If such records are transferred to another licensee the transferee shall, in writing, within ten days of accepting responsibility for maintaining such records, notify the Commissioner.

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 June 10, 2016.

TRD-201602930

Ernest C. Garcia

General Counsel

Department of Savings and Mortgage Lending

Effective date: June 30, 2016

Proposal publication date: April 29, 2016

For further information, please call: (512) 475-0787



## CHAPTER 81. MORTGAGE BANKERS AND RESIDENTIAL MORTGAGE LOAN ORIGINATORS

### SUBCHAPTER A. GENERAL PROVISIONS

#### 7 TAC §81.2

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), adopts amendments to §81.2 in 7 Texas Administrative Code Chapter 81, Subchapter A, concerning general provisions, without changes to the proposed text as published in the April 29, 2016, issue of the *Texas Register* (41 TexReg 3041). The rule will not be republished.

In general, the purpose of the amendment regarding this rule is to implement changes resulting from the commission's review of Chapter 81, under Texas Government Code §2001.039.

Section 81.2 addresses definitions. The adopted amendments reorganize the terms to reflect an alphabetical order, and introduce new terms to create parity with 7 TAC Chapters 79 (concerning Residential Mortgage Loan Servicers) and 80 (concerning Texas Residential Mortgage Loan Companies) to enhance clarity.

The department received no comments regarding the proposed amendments.

The amendments are adopted under Texas Finance Code §157.023, which provide that the Finance Commission may adopt rules relating to Mortgage Bankers and Residential Mortgage Loan Originators.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, Chapter 157.

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 June 10, 2016.

TRD-201602931

Ernest C. Garcia

General Counsel

Department of Savings and Mortgage Lending

Effective date: June 30, 2016

Proposal publication date: April 29, 2016

For further information, please call: (512) 475-0787



### SUBCHAPTER C. DUTIES AND RESPONSIBILITIES

#### 7 TAC §81.204, §81.205

The Finance Commission of Texas (the commission) on behalf of the Department of Savings and Mortgage Lending (the department), adopts amendments to §81.204 and §81.205, concerning duties and responsibilities, without changes to the proposed text as published in the April 29, 2016, issue of the *Texas Register* (41 TexReg 3042). The rules will not be republished.

In general, the purpose of the adoption regarding these rules is to implement changes resulting from the commission's review of Chapter 81, under Texas Government Code §2001.039.

Section 81.204 addresses books and records. The adopted amendment adds clarifying language.

Section 81.205 addresses mortgage call reports. The adopted amendment emphasizes that the term "administrative action" includes the assessment of an administrative penalty.

The department received no comments regarding the proposed amendments.

The amendments are adopted under Texas Finance Code §157.023, which provides that the Finance Commission may adopt rules relating to Mortgage Bankers and Residential Mortgage Loan Originators.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, Chapter 157.

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 June 10, 2016.

TRD-201602933

Ernest C. Garcia

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Department of Savings and Mortgage Lending

Effective date: June 30, 2016

Proposal publication date: April 29, 2016

For further information, please call: (512) 475-0787



## PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

### CHAPTER 82. ADMINISTRATION

#### 7 TAC §§82.1 - 82.4

The Finance Commission of Texas (commission) adopts amendments to 7 TAC Chapter 82, concerning Administration. The commission adopts amendments to all four rules contained in Chapter 82: §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.

The commission adopts the amendments without changes to the proposed text as published in the April 29, 2016, issue of the *Texas Register* (41 TexReg 3042).

The commission received no written comments on the proposal.

In general, the purpose of the amendments to Chapter 82 is to implement changes resulting from the commission's review of this chapter under Texas Government Code, §2001.039. The notice of intention to review 7 TAC Chapter 82 was published in the *Texas Register* on March 11, 2016 (41 TexReg 1979). The agency did not receive any comments on the notice of intention to review.

Overall, the adopted amendments update authorized viewers of criminal history information, update public information procedures, clarify the requirements to request a criminal history evaluation letter, clarify the recipients of consumer complaint procedures, and make technical corrections. The individual purposes

of the amendments to each rule are provided in the following paragraphs.

The purpose of the amendments to §82.1 is to update the list of agency employees who have access to criminal history record information, and to make technical corrections that improve readability. The adopted amendments to §82.1 implement Texas Government Code, §411.095, as amended by Senate Bill (SB) 1075 (effective September 1, 2015), relating to criminal history record information obtained by the Office of Consumer Credit Commissioner (OCCC). SB 1075 amended Texas Government Code, §411.095 by adding the following to the list of persons about whom the OCCC can obtain criminal history record information: (1) an employee or volunteer with the OCCC, (2) an applicant for employment with the OCCC, and (3) a contractor or subcontractor of the OCCC.

In §82.1(a), definitions of "commissioner," "criminal history record information," and "OCCC" have been added. In §82.1(b) (former subsection (a)), the provisions referring to the OCCC's use of criminal history record information have been updated to cite Texas Government Code, §411.095. In §82.1(c) (former subsection (b)), the list of agency employees with access to criminal history record information has been updated to include the following employees: the director of strategic communications, administration and planning; and the human resources specialist. These changes reflect the agency's practice. The commissioner has authorized the human resources specialist to review criminal history record information in evaluating applicants for employment. In addition, the director of strategic communications, administration and planning may review criminal history record information in evaluating employees, applicants for employment, contractors, and subcontractors. Subsection (c) also includes changes to improve readability and conform to the definition of "commissioner."

The purpose of the amendments to §82.2 is to conform the rule to the agency's current public information process, remove obsolete language, and add clarification.

The OCCC has recently transferred its public information duties to the legal department and along with that reorganization, has reviewed and updated its public information procedures.

In subsection (a) of §82.2 concerning definitions, the term defined in paragraph (5) has been updated to match the one used by the Office of the Attorney General (OAG) in 1 TAC §70.2. Accordingly, the OAG term "Standard paper copy" has replaced the term "Standard-size copy" in §82.2(a)(5).

Subsection (b) of §82.2 includes several amendments to provide clarification regarding the initial receipt of public information requests by the OCCC. Subsection (b) has been divided into five paragraphs in order to provide better readability. The former language in §82.2(b) through the phrase "normal business activities" has been retained under new paragraph (1) with the tagline "Generally." The following new closing sentence has been added to adopted §82.2(1) for clarity: "All requests will be processed in accordance with the Texas Public Information Act, and all requests will be treated equally." The remaining language from former subsection (b) has been relocated into new paragraph (4) "Confidential information," and new paragraph (5) "Fee waiver or reduction."

Two new paragraphs in §82.2(b) relate to requests received via email, and those received by other methods. Adopted new §82.2(b)(2) requires that public information requests submitted via email must be sent to the OCCC's designated public

information officer, as authorized by Texas Government Code, §552.301(c). Directing requests for public information submitted via email to the public information officer or designee serves to streamline the agency's public information process, and will ensure that all email requests are handled timely and consistently.

Adopted new §82.2(b)(3) provides the agency's address for requests delivered by mail or hand delivery, and the fax number for requests sent by facsimile. This provision reflects the agency's existing policy for requests received by these methods, providing more clarification in the rule.

Subsection (c) of §82.2 concerning copy and service charges has experienced several revisions to better reflect current agency practice and provide clarity for requestors of public information. Introductory language has been added to subsection (c) citing use of the applicable charges established by the OAG. The adopted amendments to §82.2(c) clarify that the charges outlined are the most common charges the OCCC collects to produce copies of public information, but that they may be supplemented or modified as authorized by the OAG cost rules.

In §82.2(c)(1) and (2), references relating to number of pages have been removed, as the OCCC's updated public information procedures will generally not involve a copy charge per page (unless paper copies are requested). Additionally, the amendments throughout §82.2(c)(1) - (2) better align with the agency's use and requestors' receipt of electronic records.

The adopted amendments to §82.2(c)(1) clarify that no fees will be collected for requests resulting in charges of \$5 or less. This provision is similar to the former language, which states that no fee will be charged for 50 or fewer pages (\$0.10 per page x 50 pages = \$5). However, the new language also reflects that labor time of \$5 or less will also not be collected. It is the OCCC's understanding that most Texas agencies do not collect fees for requests under a certain minimal dollar amount.

The adopted amendments to §82.2(c)(2) outline the application of charges to requests for public information received by the OCCC. In subparagraph (A), the clarifying phrases "copy charge" and "if paper copies are requested" clarify when \$0.10 per page will be charged. In subparagraph (B) regarding the existing \$15 per hour of personnel time, the amendments specify in more detail that the agency may charge requestors to "locate (including pulling documentation from archives), compile, manipulate (including redacting mandated confidential information), reproduce, and prepare." All of these actions are currently authorized by the OAG and used by OCCC personnel to prepare public information. The adopted language reflects this policy and provides better clarity to requestors. In addition, the phrase "labor or" has been added before "personnel time," as these two terms are often used interchangeably.

Adopted new subparagraph (C) in §82.2(c)(2) provides for a 20% overhead charge, calculated by multiplying the total personnel cost by 0.20. This 20% overhead charge is authorized by OAG cost rule 1 TAC §70.3(e). The OCCC has decided to begin charging requestors of public information an overhead charge, as the agency and requestors have shifted more to electronic records. An increasing number of the agency's requests involve manipulation of data into electronic spreadsheets, and the labor involved to compile information from the OCCC's databases can result in significant personnel time. Therefore, the controlling cost factor to produce public information is personnel time, and the resulting 20% overhead charge reflects that time.

Section 82.2(c)(3) related to requests for not readily available information has been deleted. While the cited OAG regulation is still valid and available should the agency need it, the OCCC believes it is no longer necessary to include in the agency's rule.

Since the adoption of this provision, the OCCC no longer maintains information at a remote storage location (aside from records stored at the Texas State Library and Archives Commission). In addition to increased digital storage of agency records, the OCCC has implemented an online license application system, where applicants upload documents directly to web-based cloud storage. The OCCC is currently working on a new IT project to include other agency functions, which will result in cloud storage of more types of agency records. Thus, subsection (c)(3) has been deleted as access to remote storage will become less relevant to OCCC records. As a result of this deletion, the remaining paragraphs have been renumbered accordingly.

Amendments have been adopted in §82.2(c)(4) concerning certification to clarify that in addition to certifying copies, the OCCC also provides certified statements that verify information compiled from the OCCC's records. In addition to the commissioner, the adopted amendments include the option for a designated custodian of records to sign the certification.

In adopted §82.2(c)(4) (former (c)(5)), the term has been updated to match the one used by the OAG in 1 TAC §70.3. Accordingly, the OAG term "Nonstandard copy" has replaced the term "Non-standard-size copy" in §82.2(c)(4).

In §82.2(d)(2) regarding expedited delivery, the adopted amendments clarify that a requestor must ask and the agency must agree to provide public information by overnight delivery service or other expedited delivery. A sentence has been added at the end of the provision to further clarify that the requestor must pay for this service.

Section 82.2(d)(3) has been deleted, as the OCCC will no longer charge for electronic copies of pages that had to be scanned or copied in order to redact confidential information.

In §82.2(e)(2) regarding redaction of confidential information prepared for inspection, references relating to number of pages have been removed and replaced with references to "paper records." The adopted amendments state that if confidential information must be redacted prior to requestor's inspection of paper records, the agency may charge \$0.10 per page to prepare the redacted pages.

Two new paragraphs in §82.2(e) relate to inspection of records. Adopted new §82.2(e)(3) provides that labor charges may be assessed if production of electronic information requires programming or manipulation of data prior to inspection. Adopted new §82.2(e)(4) states that the OCCC will send a cost estimate should a request for inspection result in charges over \$40. Adopted new §82.2(e)(3) and (4) reflect the agency's existing policy for requests to inspect records, providing more clarification in the rule. As a result of the two new paragraphs, the remaining paragraph has been renumbered accordingly.

Additional changes throughout §82.2 improve readability and clarity, and provide technical corrections.

The purpose of the amendments to §82.3 is to clarify the requirements for requesting a criminal history evaluation letter. The adopted amendments to §82.3 implement Texas Occupations Code, §53.102, which allows a person to request that a licensing authority issue a criminal history evaluation letter regarding

the person's eligibility for a license issued by that authority if the person: (1) is enrolled or planning to enroll in an educational program that prepares a person for an initial license or is planning to take an examination for an initial license, and (2) has reason to believe that the person is ineligible for the license due to a conviction or deferred adjudication for a felony or misdemeanor offense.

In §82.3(a), definitions of "agency or OCCC," "commissioner," and "principal party" have been added. In §82.3(b) (former subsection (a)), the provisions relating to the rule's purpose have been updated for readability and clarity. In §82.3(c) (former subsection (b)), the provisions relating to the rule's applicability have been updated to specify the individuals and business entities that may request the criminal history evaluation letter. The adopted amendments include references to the enrollment and examination requirement in Texas Occupations Code, §53.102(a)(1). In §82.3(d) (former subsection (c)), the provisions regarding required information have been updated to require a description of any educational program that the requestor is planning to enroll in, as well as a description of any examination that the requestor is planning to take. In §82.3(f) (former subsection (e)), the fee provisions have been amended to specify that the requestor must pay a fingerprint-processing fee to a party designated by the Texas Department of Public Safety (DPS), rather than a \$40 fingerprint-processing fee to the OCCC. This amendment conforms the rule to the method by which applicants currently provide fingerprint information through DPS's Fingerprint Applicant Services of Texas (FAST) program. Additional changes throughout §82.3 improve readability and clarity.

The purpose of the amendments to §82.4 is to clarify the requirements for consumer complaints under Texas Finance Code, §14.062. In §82.4(b), a definition of "OCCC" has been added. Adopted new subsection (c) explains that as provided by Texas Finance Code, §14.062(b), the OCCC will provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the OCCC's policies and procedures relating to complaint investigation and resolution. In §82.4(d) (former subsection (c)), the text of the rule has been updated to specify that if the OCCC receives a complaint from a source other than a person filing the complaint (e.g., another state agency), then the OCCC is not required to send the policies and procedures to the subject of the complaint or the source of the complaint. Additional changes throughout §82.4 improve readability and clarity.

The amendments are adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Chapter 14 and Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §14.157 authorizes the commission to adopt rules governing the custody and use of criminal history record information obtained under Texas Finance Code, Chapter 14, Subchapter D. The adopted amendments to §82.2 are authorized under Texas Finance Code, §14.107(a), which authorizes the commission to establish reasonable and necessary fees for carrying out the commissioner's powers under Chapter 14. Additionally, Texas Government Code, §552.230 authorizes governmental bodies to adopt reasonable rules of procedure under which public information may be inspected and copied.

The adopted amendments to §82.3 are authorized by Texas Occupations Code, §53.105, which authorizes a licensing authority to charge a fee for a criminal history evaluation letter, in an

amount necessary to cover the cost of administering Texas Occupations Code, Chapter 53, Subchapter D.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, Chapter 14 and Title 4.

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 June 10, 2016.

TRD-201602942

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Effective date: June 30, 2016

Proposal publication date: April 29, 2016

For further information, please call: (512) 936-7621



## TITLE 10. COMMUNITY DEVELOPMENT

### PART 5. OFFICE OF THE GOVERNOR, ECONOMIC DEVELOPMENT AND TOURISM OFFICE

#### CHAPTER 182. BUSINESS ASSISTANCE

##### SUBCHAPTER B. LINKED DEPOSIT PROGRAM

#### 10 TAC §§182.51 - 182.60

The Office of the Governor, Economic Development and Tourism Office (OOG) adopts the repeal of 10 TAC Chapter 182, Business Assistance, Subchapter B, Linked Deposit Program, §§182.51 - 182.60, concerning the Linked Deposit Program. The repeal is adopted without changes to the proposed text as published in the April 29, 2016, issue of the *Texas Register* (41 TexReg 3048).

#### Reasoned Justification.

The repealed rules, §§182.51 - 182.60, were the administrative rules related to the Linked Deposit Program. House Bill 2667, passed during the 84th Legislature, Regular Session, repealed the statutory authority governing the Linked Deposit Program. Consequently, the associated administrative rules have become obsolete regulation.

#### Public Comments

No comments were received regarding the proposed repeal.

#### Statutory Authority

The repeal of §§182.51 - 182.60 is adopted under Texas Government Code, §489.002, which authorizes the Office of the Governor to adopt necessary rules.

#### Cross Reference to Statute

The repeal of §§182.51 - 182.60 affects no other code, article, or statute.

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 June 13, 2016.

TRD-201602955

Diane Morris

Assistant General Counsel

Office of the Governor, Economic Development and Tourism Office

Effective date: July 3, 2016

Proposal publication date: April 29, 2016

For further information, please call: (512) 463-1955



## CHAPTER 183. INVESTMENT POLICY

### 10 TAC §§183.1 - 183.10

The Office of the Governor, Economic Development and Tourism Office (OOG) adopts the repeal of 10 TAC Chapter 183, Investment Policy, §§183.1 - 183.10, concerning the Texas Small Business Development Industrial Corporation and TEXCAP Financing Corporation Program. The repeal is adopted without changes to the proposed text as published in the April 29, 2016, issue of the *Texas Register* (41 TexReg 3049).

#### Reasoned Justification

The repealed rules, §§183.1 - 183.10, were the administrative rules related to the Texas Small Business Development Industrial Corporation Program and TEXCAP Financing Corporation. House Bill 2667, passed during the 84th Legislature, Regular Session, repealed the statutory authority governing the Texas Small Business Development Industrial Corporation Program. Consequently, the associated administrative rules have become obsolete regulation.

#### Public Comments

No comments were received regarding the proposed repeal.

#### Statutory Authority

The repeal of §§183.1 - 183.10 is adopted under Texas Government Code, §489.002, which authorizes the Office of the Governor to adopt necessary rules.

#### Cross Reference to Statute

The repeal of §§183.1 - 183.10 affects no other code, article, or statute.

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 June 13, 2016.

TRD-201602956

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Effective date: July 3, 2016

Proposal publication date: April 29, 2016

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## TITLE 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

## CHAPTER 37. MATERNAL AND INFANT HEALTH SERVICES SUBCHAPTER R. ADVISORY COMMITTEES

### 25 TAC §§37.401, 37.410, 37.420

The Executive Commissioner of the Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (department), adopts new §37.401, concerning the Maternal Mortality and Morbidity Task Force, new §37.410, concerning the State Child Fatality Review Committee, and new §37.420, concerning the Sickle Cell Advisory Committee without changes to the proposed text as published in the April 1, 2016, issue of the *Texas Register* (41 TexReg 2389) and, therefore, the sections will not be republished.

#### BACKGROUND AND PURPOSE

Senate Bill (SB) 200 and SB 277, 84th Legislature, Regular Session, 2015, directed the Executive Commissioner of HHSC to establish and maintain advisory committees to address major health and human services issues and to adopt rules to govern the advisory committee's purpose, tasks, reporting requirements, and date of abolition. As part of health and human services (HHS) system-wide inventory and analysis, the Maternal Mortality and Morbidity Task Force, the State Child Fatality Review Team Committee and the Sickle Cell Advisory Committee have been identified for rulemaking.

The Maternal Mortality and Morbidity Task Force is a statutorily-defined multidisciplinary task force within the department. Texas Health and Safety Code, §§34.001 - 34.018, directs this task force to study and review cases of pregnancy-related deaths and trends in severe maternal morbidity, determine the feasibility of the task force studying cases of severe maternal morbidity, and make recommendations to help reduce the incidence of pregnancy-related deaths and severe maternal morbidity in Texas. New §37.401 describes the operations of the task force including the purpose, tasks, reporting requirements, membership composition, and meeting schedules.

The State Child Fatality Review Team Committee is a statutorily-defined multidisciplinary committee within the department, whose mission is to reduce the number of preventable child deaths. Texas Family Code, §§264.501 - 264.515, directs the State Child Fatality Review Team Committee to meet quarterly to discuss issues related to child risks and safety, to develop strategies to improve child death data collection and analysis, to develop position statements on specific child safety issues, and to research and develop recommendations that will make Texas safer for children. New §37.410 describes the operations of the committee including the purpose, tasks, reporting requirements, membership composition, and meeting schedules. This team has been in existence with regular meetings since 1995.

Senate Bill 277, 84th Legislature, Regular Session, 2015, repealed Texas Health and Safety Code, §33.053, abolishing the Sickle Cell Advisory Committee. As a part of the HHS system-wide analysis, the HHSC Executive Commissioner recommended continuation of the Sickle Cell Advisory Committee in rule. Texas Health and Safety Code, §33.052, directs the department to identify efforts related to the expansion and coordination of education, treatment, and continuity of care programs for individuals with sickle cell trait and sickle cell disease. The purpose of this advisory committee is to raise public awareness of sickle cell disease and sickle cell trait. New §37.420 establishes the committee's purpose, tasks, reporting requirements, mem-

bership requirements, membership qualifications and meetings schedules.

#### SECTION-BY-SECTION SUMMARY

An amendment to the title of Subchapter R, "School Health Advisory Committee," revises the title to "Advisory Committees" to allow for additional advisory committees rules within this subchapter.

New §37.401 establishes the Maternal Mortality and Morbidity Task Force. The new rule (1) identifies the statutory authority for the task force; (2) outlines the task force's purpose; (3) describes tasks; (4) outlines the reporting requirements; (5) gives the date of abolition; (6) establishes membership composition and qualifications; and (7) establishes meeting schedules.

New §37.410 establishes the State Child Fatality Review Team Committee. The new rule (1) identifies the statutory authority for the committee; (2) outlines the committee's purpose; (3) describes tasks; (4) outlines the reporting requirements; (5) establishes membership composition and qualifications; and (6) establishes meeting schedules.

New §37.420 establishes the Sickle Cell Advisory Committee. The new rule (1) identifies the statutory authority for the committee; (2) outlines the committee's purpose; (3) describes tasks; (4) describes reporting requirements; (5) gives the date of abolition; (6) establishes membership composition and qualifications; and (7) establishes meeting schedules.

#### COMMENTS

The department, on behalf of HHSC, did not receive any comments regarding the proposed rules during the comment period.

#### LEGAL CERTIFICATION

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

#### STATUTORY AUTHORITY

The new rules are authorized by Texas Government Code, §531.012, which requires the department to adopt rules necessary to establish an Advisory Committee, and by Chapter 2110 in general; and Texas Government Code, §531.0055(e), and the Texas Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Texas Health and Safety Code, Chapter 1001.

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 June 10, 2016.

TRD-201602953

Lisa Hernandez

General Counsel

Department of State Health Services

Effective date: June 30, 2016

Proposal publication date: April 1, 2016

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



## CHAPTER 97. COMMUNICABLE DISEASES

### SUBCHAPTER A. CONTROL OF COMMUNICABLE DISEASES

#### 25 TAC §97.11, §97.12

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §97.11 and §97.12, concerning the communicable disease exposure and testing of emergency response employees or volunteers. The amendment to §97.11 is adopted with changes to the proposed text as published in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1338). The amendment to §97.12 is adopted without changes and, therefore, the section will not be republished.

#### BACKGROUND AND PURPOSE

The purpose of the amendments is to update communicable disease exposure and testing protocols for emergency response employees or volunteers and require each emergency response employee or volunteer entity to nominate a designated infection control officer for their organization. The amendments are necessary to comply with Senate Bill (SB) 1574, 84th Legislature, Regular Session, which amended Health and Safety Code, Chapter 81; Article 18, Code of Criminal Procedure; and Government Code, Chapter 607, and requires the department to expand the diseases and criteria that constitute exposure; prescribe the qualifications for an individual to become a designated infection control officer; and in certain circumstances, order testing of a person who may have exposed emergency response employees or volunteers to a reportable disease; and give notice of test results to designated infection control officers. The amendments also update other requirements for consistency with guidance from the Centers for Disease Control and Prevention and are a part of the four-year rule review process.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 97.11 and 97.12 have been reviewed, and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed to administer the program effectively.

#### SECTION-BY-SECTION SUMMARY

The amendments to §97.11 and §97.12 replace the terms "emergency medical service employee, peace officer, detention officer, county jailer, or fire fighter" and "emergency responder" with "emergency response employee or volunteer" to conform with changes made to Health and Safety Code, §81.003, to reclassify these individuals under the broad term "emergency response employee or volunteer." These amendments are necessary to comply with SB 1574.

The amendments to §97.11(b)(1) define "designated infection control officer" and grant these individuals the ability to receive notice of exposure and positive or negative test results. The entities that employ these individuals must notify the local health authority or local health care facilities that they have a designated infection control officer or alternate designated infection control officer. Section 97.11(b)(2) defines "emergency response employer or volunteer." These amendments are necessary to comply with SB 1574.

The amendments to §97.11(c)(6) revise the list of diseases and criteria which constitute exposure to include "any other reportable disease or a disease caused by a select agent or toxin identified or listed under 42 C.F.R. §73.3, if there has been an exposure via the usual mode of transmission of that disease as determined by the department or the local health authority." These amendments are necessary to comply with SB 1574.

The amendments to §97.11(d)(2)(B) allow an emergency response employee or volunteer entity's designated infection control officer to determine if a risk of exposure to a notifiable condition has occurred in compliance with SB 1574.

The amendments to §97.11 and §97.12 in the following paragraph were originally presented at the June 14, 2015, State Health Services Council (council) meeting as a part of the state agency four-year review of rules, but were withdrawn from that rulemaking timeline so that the amendments concerning SB 1574 could be included and presented at the November 18 - 19, 2015, council meetings. The purpose of the amendments was to clarify the conditions and diseases that must be reported; clarify the minimal reportable information requirements for the conditions and diseases; and adjust the list of reportable diseases to include additional diseases and conditions of concern to public health. The amendments comply with guidance from the Centers for Disease Control and Prevention regarding surveillance for reportable conditions, and allow the department to conduct more relevant and efficient disease surveillance. The amendments comply with Health and Safety Code, Chapter 81, which requires the department to identify each communicable disease or health condition which is reportable under the chapter.

The amendments to §97.11(c)(1) delete the term "SARS" and update the condition to "novel coronavirus causing severe acute respiratory disease" to account for different novel coronaviruses (including Middle Eastern Respiratory Syndrome (MERS)) that could emerge. Novel influenza was added to the list of diseases and criteria which constitute exposure because it is a high consequence infectious disease. The amendments to §97.11(c)(2) revise "Haemophilus influenzae type b infection, invasive" to "Haemophilus influenzae, invasive" to ensure that all *Haemophilus influenzae* in Texas are identified, especially in children under five years of age (the age group targeted for vaccine and at most risk from the disease). In §97.11(c)(4), "Shiga-toxin producing *E.coli* infection" nomenclature is updated to "Shiga toxin-producing *E.coli* infection" to align with the Centers for Disease Control and Prevention's use of hyphenation. Poliomyelitis was also added in subsection (c)(4) to account for potential fecal-to-oral transmission. The amendments to §97.12(c) add a condition, "Methicillin-resistant *Staphylococcus aureus* (MRSA) wounds, skin infections or soft tissue infections," which is referenced in §97.11(c)(5), as a notifiable condition that constitutes exposure for possible testing of an emergency response employee or volunteer.

The amendments to §97.12(c) add the rule reference to §97.11(c)(6) which states "any other reportable disease or a disease caused by a select agent or toxin identified or listed under 42 C.F.R. §73.3... " as notifiable conditions that constitute exposure for possible testing of an emergency response employee or volunteer in compliance with SB 1574.

#### COMMENTS

The department, on behalf of the commission, did not receive any public comments regarding the proposed rules during the comment period.

#### DEPARTMENT COMMENT

A minor clarification was made by the department to §97.11(b)(1) to read that an infectious disease control officer following up on care provided "to" instead of "by" the affected emergency responder or volunteer to be consistent with Health and Safety Code, §81.012.

#### LEGAL CERTIFICATION

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

#### STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §81.004, which authorizes rules necessary for the effective administration of the Communicable Disease Prevention and Control Act; Health and Safety Code §81.048, which provides the department with the authority to designate reportable disease for notification, define the conditions that constitute possible exposure to those diseases, and notify emergency response employees or volunteers of test results; Health and Safety Code, §81.050, which provides the department with the authority to order testing of a person who may have exposed an emergency response employee or volunteer to a reportable disease; and Government Code, §531.0055 and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

*§97.11. Notification of Emergency Response Employees, Volunteers, or Other Persons Providing Emergency Care of Possible Exposure to a Disease.*

(a) Purpose. The Communicable Disease Prevention and Control Act (Act), §81.048, requires a licensed hospital to notify a health authority and designated infection control officer in certain instances when an emergency response employee or volunteer may have been exposed to a reportable disease during the course of duty from a person delivered to the hospital under conditions that were favorable for transmission. A hospital that gives notice of a possible exposure under this section or a local health authority or designated infection control officer that receives notice of a possible exposure under this section may give notice of the possible exposure to a person other than an emergency response employee or volunteer if the person demonstrates that the person was exposed to the reportable disease while providing emergency care.

(b) Definitions.

(1) Designated infection control officer--The person serving as an entity's designated infection control officer under Health and Safety Code, §81.012, who has a health care professional license or specific training in infection control, acts as liaison between the entity and the destination hospital, and monitors all follow-up treatment provided to the affected emergency response employee or volunteer.

(2) Emergency response employee or volunteer--An individual acting in the course and scope of employment or service as a volunteer as emergency medical service personnel, a peace officer, a detention officer, a county jailer, or a fire fighter, as defined under Health and Safety Code, §81.003.

(c) Disease and criteria which constitute exposure. The following diseases and conditions constitute a possible exposure to the disease for the purposes of the Act, §81.048:

(1) chickenpox; diphtheria; measles (rubeola); novel coronavirus causing severe acute respiratory disease; novel influenza; pertussis; pneumonic plague; smallpox; pulmonary or laryngeal tuberculosis; and any viral hemorrhagic fever, if the worker and the patient are in the same room, vehicle, ambulance, or other enclosed space;

(2) *Haemophilus influenzae*, invasive; meningitis; meningococcal infections, invasive; mumps; poliomyelitis; Q fever (pneumonia); rabies; and rubella, if there has been an examination of the throat, oral or tracheal intubation or suctioning, or mouth-to-mouth resuscitation;

(3) acquired immune deficiency syndrome (AIDS); anthrax; brucellosis; dengue; ehrlichiosis; hepatitis, viral; human immunodeficiency virus (HIV) infection; malaria; plague; syphilis; tularemia; typhus; any viral hemorrhagic fever; and yellow fever, if there has been a needlestick or other penetrating puncture of the skin with a used needle or other contaminated item; a splatter or aerosol into the eye, nose, or mouth; or any significant contamination of an open wound or non-intact skin with blood or body fluids;

(4) amebiasis; campylobacteriosis; cholera; cryptosporidiosis; *Escherichia coli* O157:H7 or other Shiga toxin-producing *E. coli* infection; hepatitis A; poliomyelitis; salmonellosis, including typhoid fever; shigellosis; and *Vibrio* infections, if fecal material is ingested;

(5) Methicillin-resistant *Staphylococcus aureus* (MRSA) wounds, skin infections or soft tissue infections, if there has been contact of non-intact skin to these infections or drainage from these infections; and

(6) any other reportable disease or a disease caused by a select agent or toxin identified or listed under 42 C.F.R. §73.3, if there has been an exposure via the usual mode of transmission of that disease as determined by the department or the local health authority.

(d) Notification processes. The entity that employs or uses the services of an emergency response employee or volunteer is responsible for notifying the local health authorities or local health care facilities that the entity has a designated infection control officer or alternate designated infection control officer. The following notification processes shall apply when possible exposures to notifiable conditions occur.

(1) If the hospital has knowledge that, on admission to the hospital, the person transported has any of the notifiable conditions listed in subsection (c)(1) of this section, then notice of a possible exposure of an emergency response employee or volunteer to the disease shall be given to the health authority for the jurisdiction where the hospital is located and the designated infection control officer of the entity that employs or uses the services of the emergency response employee or volunteer.

(2) For possible exposures to any of the diseases listed in subsection (c)(2) - (6) of this section, the emergency response employee or volunteer or the designated infection control officer of the employing entity shall provide a medical professional at the hospital with notice, preferably written, of the circumstances of the possible exposure. Once the hospital has knowledge of a possible exposure, then notice shall be given as follows.

(A) The hospital shall report the following information to the health authority for the jurisdiction where the hospital is located and the designated infection control officer of the entity that employs or uses the services of the emergency response employee or volunteer:

(i) the name of the emergency response employee or volunteer possibly exposed;

(ii) the date of the exposure;

(iii) the circumstances of the exposure;

(iv) whether laboratory testing was performed for diseases potentially transmitted by such exposures; and

(v) positive or negative test results for these diseases.

(B) The health authority or designated infection control officer of the entity that employs or uses the services of the affected emergency response employee or volunteer shall determine whether or not significant risk of disease transmission exists and report his/her assessment of the possible exposure event to the emergency response employee or volunteer.

(C) A person notified of a possible exposure under this section shall maintain the confidentiality of the information provided to him or her.

(e) Obligation to test. This section does not create a duty for a hospital to perform a test that is not necessary for the medical management of the person delivered to the hospital.

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 June 8, 2016.

TRD-201602901

Lisa Hernandez

General Counsel

Department of State Health Services

Effective date: June 28, 2016

Proposal publication date: February 26, 2016

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



## CHAPTER 265. GENERAL SANITATION

### SUBCHAPTER B. TEXAS YOUTH CAMPS

#### SAFETY AND HEALTH

#### 25 TAC §265.29

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts an amendment to §265.29, concerning the Youth Camp Training Advisory Committee. The amendment to §265.29 is adopted without changes to the proposed text as published in the April 1, 2016, issue of the *Texas Register* (41 TexReg 2395) and, therefore, the section will not be republished.

#### BACKGROUND AND PURPOSE

The purpose of the amendment is to implement the repeal of Health and Safety Code, §141.0096, by Senate Bill (SB) 277, 84th Legislature, Regular Session, 2015, which abolished the Youth Camp Training Advisory Committee. Section 265.29 currently includes the Youth Camp Training Advisory Committee and the Youth Camp Advisory Committee. This amendment will remove the Youth Camp Training Advisory Committee from §265.29.

The Youth Camp Training Advisory Committee was created by the Legislature in 2005 to advise the department and the executive commissioner in the development of criteria and guidelines for the training and examination program on sexual abuse and child molestation for staff and volunteers of youth camps.

The Youth Camp Training Advisory Committee was one of several advisory committees recommended for abolishment by the Sunset Advisory Commission during the 2014 review of the department. Subsequent to the repeal of the statutory requirements for this and other committees, the commission conducted a comprehensive analysis and sought stakeholder input on the continuation of the advisory committees abolished in statute to determine if there was a need to recreate any of the committees in rule.

No comments were received regarding the discontinuation of the Youth Camp Training Advisory Committee. The department will continue to obtain input as needed on youth camp training through the Youth Camp Advisory Committee and ongoing interactions with youth camp representatives.

#### SECTION-BY-SECTION SUMMARY

Section 265.29(b) was deleted to remove references to the Youth Camp Training Advisory Committee, abolished by SB 277.

The amendment to §265.29(c) renumbers and renames subsection (b) to reflect section reorganization and the procedures for the Youth Camp Advisory Committee.

#### COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rule during the comment period.

#### LEGAL CERTIFICATION

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

#### STATUTORY AUTHORITY

The amendment is authorized by Health and Safety Code, §141.008, which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules necessary to administer the youth camp program; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

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 June 10, 2016.

TRD-201602952

Lisa Hernandez

General Counsel

Department of State Health Services

Effective date: June 30, 2016

Proposal publication date: April 1, 2016

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

## CHAPTER 411. STATE MENTAL HEALTH AUTHORITY RESPONSIBILITIES

The Executive Commissioner of the Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (department), adopts the repeal of §§411.1 - 411.4, 411.7, 411.12, 411.20, and 411.21, concerning Advisory Committees, and adopts new §411.1 and §411.3, concerning the Joint Committee on Access and Forensic Services, without changes to the proposed text as published in the April 8, 2016, issue of the *Texas Register* (41 TexReg 2585) and, therefore, the sections will not be republished.

#### BACKGROUND AND PURPOSE

The abolished rules are necessary to comply with S.B. 777, 84th Legislature, Regular Session, 2015, which amends Health and Safety Code, §571.027, by abolishing the Inpatient Mental Health Services Advisory Committee in §411.12. The committee was one of several advisory committees recommended for abolishment by the Sunset Advisory Commission during the 2014 review of the department. The committee is inactive and has no active members. It was statutorily directed to provide the department with advice on issues and policies concerning mental health services in private mental hospitals and psychiatric units of general hospitals, coordination and communication regarding interpretation and enforcement of policies, and training for surveyors or investigators.

In addition, the repeals are necessary to comply with S.B. 200, 84th Legislature, Regular Session, 2015, which amends Health and Safety Code, §531.012, by requiring the Executive Commissioner to establish and maintain advisory committees to consider issues and solicit public input across major areas of the health and human services system, including behavioral health. While not mentioned in either of these statutes, it was determined the Mental Health Planning and Advisory Council in §411.7, currently referred to as the Council for Advising and Planning (CAP) for the Prevention and Treatment of Mental and Substance Use Disorders, will be reconstituted as a subcommittee of the Behavioral Health Advisory Committee to meet requirements for a mental health planning council under federal law in 42 U.S.C. §300x-3. The Behavioral Health Advisory Committee is created as an HHSC advisory committee; therefore, the rules for the committee and subcommittee will be HHSC rules.

The new rules are necessary to comply with S.B. 1507, 84th Legislature, Regular Session, 2015, which added Health and Safety Code, §532.0131 and §533.051(c). The new legislation requires the department to establish rules that govern both a forensic work group tasked with making recommendations relating to the effective coordination of forensic services, and an advisory panel tasked with making recommendations and monitoring the implementation of a bed day allocation methodology and utilization review protocol for state-funded hospital beds. It was determined these two committees will be combined into one committee.

#### SECTION-BY-SECTION SUMMARY

Section 411.1 is repealed in order to remove references to outdated terminology for the "Texas Department of Mental Health and Mental Retardation" and to reorganize the rule text. References to the "Department of State Health Services" and Texas Government Code, Chapter 2110, will be included in new §411.1 and §411.3.

Section 411.2 is repealed in order to remove references to outdated terminology for "Texas Department of Mental Health and Mental Retardation."

Section 411.3 is repealed concerning outdated definitions. New definitions are included in the new §411.1.

Section 411.4 is repealed concerning the outdated advisory committee requirements and new requirements are included in new §411.3.

Section 411.7 is repealed which requires this committee be abolished on January 1, 2012, unless abolished on an earlier date or reauthorized.

Section 411.12 is repealed as a result of the abolished Inpatient Mental Health Services Advisory Committee.

Section 411.20 is repealed as the statutory authority will be revised and included in the new §411.3.

Section 411.21 is repealed to remove the outdated distribution of the advisory committees and will not be included in the new proposed rules.

New §411.1 contains definitions for the subchapter and new §411.3 sets forth the statutory authority, applicability, purpose, tasks, reporting requirements, abolition, membership, quorum and presiding officers of the Joint Committee on Access and Forensic Services.

The title of Subchapter A has been revised to reflect "Joint Committee on Access and Forensic Services" instead of "Advisory Committees."

#### COMMENTS

The department did not receive comments concerning the proposed repeal of the Inpatient Mental Health Services Advisory Committee and the Mental Health Planning and Advisory Council. Additionally, the department did not receive comments concerning the proposed rules concerning the Joint Committee on Access and Forensic Services.

#### LEGAL CERTIFICATION

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

### SUBCHAPTER A. ADVISORY COMMITTEES

#### 25 TAC §§411.1 - 411.4, 411.7, 411.12, 411.20, 411.21

#### STATUTORY AUTHORITY

The repeals are authorized by Health and Safety Code, §531.0131 and §533.051(c), which define membership requirements and prescribe duties of the Joint Committee on Access and Forensic Services; Health and Safety Code, §533.0515, which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules as necessary to implement its provisions; and Government Code, §532.012, which authorizes the Executive Commissioner to adopt rules for advisory committees. The rules are authorized by Government Code, §531.0055 and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

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 June 8, 2016.

TRD-201602903

Lisa Hernandez

General Counsel

Department of State Health Services

Effective date: June 28, 2016

Proposal publication date: April 8, 2016

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



### SUBCHAPTER A. JOINT COMMITTEE ON ACCESS AND FORENSIC SERVICES

#### 25 TAC §411.1, §411.3

#### STATUTORY AUTHORITY

The new sections are authorized by Health and Safety Code, §531.0131 and §533.051(c), which define membership requirements and prescribe duties of the Joint Committee on Access and Forensic Services; Health and Safety Code, §533.0515, which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules as necessary to implement its provisions; and Government Code, §532.012, which authorizes the Executive Commissioner to adopt rules for advisory committees. The rules are authorized by Government Code, §531.0055 and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

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 June 8, 2016.

TRD-201602904

Lisa Hernandez

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Department of State Health Services

Effective date: June 28, 2016

Proposal publication date: April 8, 2016

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



### TITLE 34. PUBLIC FINANCE

#### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 3. TAX ADMINISTRATION

#### SUBCHAPTER V. FRANCHISE TAX

#### 34 TAC §3.582

The Comptroller of Public Accounts adopts amendments to §3.582, concerning margin: passive entities, without changes

to the proposed text as published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3241). This amendment memorializes a policy change effective for reports originally due on or after January 1, 2011; clarifies policy regarding entities with no federal gross income; implements House Bill 2891, 84th Legislature, 2015 (HB 2891); and edits the section to improve readability.

The effective date in subsection (a) is amended to recognize that some provisions have effective dates other than January 1, 2008.

Subsection (c) and paragraph (1) are amended to improve readability.

Subsection (c)(3) is added to clarify that an entity with no federal gross income does not qualify as a passive entity.

Subsection (g) is amended to improve readability and clarity.

Headings are added to subsection (g)(1) and (2) to improve readability and for purposes of consistency. Also, "No Tax Due" is added to clarify what type of report may need to be filed.

Paragraph (1) is amended to memorialize a change in policy effective for franchise tax reports originally due on or after January 1, 2011, requiring passive entities that are registered or are required to be registered with either the Texas Secretary of State or the comptroller's office to file a No Tax Due Report to affirm that the entity qualifies as passive for the period upon which the tax is based. See STAR Accession No. 201204390L (April 2012). The former policy, which did not require an entity that filed as passive on a prior report to file a subsequent franchise tax report as long as the entity continued to qualify as passive, is deleted from the subsection.

New paragraph (3) is added to give guidance regarding a passive entity's filing responsibility for Information Reports and to implement HB 2891. Entities that qualify as passive are not required to file a Public Information or an Ownership Information Report; however, a limited partnership that qualifies as passive may be required to file with the secretary of state.

Former paragraph (3), on reporting requirements for entities that no longer qualify as passive, is removed from subsection (g) on "reporting requirement for passive entities," and is now subsection (h). A heading is added to improve readability and the content is amended to reflect the change in filing requirements as discussed in the amendment to paragraph (1). An unregistered entity that no longer qualifies as passive must register with the comptroller's office and begin filing annual franchise tax reports.

Subsection (h)(1) is added to direct a taxpayer to §3.584 of this title (relating to Margin: Reports and Payments) for information on reporting for periods the entity does not qualify as passive. Paragraph (2) is added to direct a taxpayer to subsection (g)(1) for information on reporting for subsequent periods the entity qualifies as passive.

Former subsection (g)(4), on responding to notifications, is moved and is now subsection (i). A heading has also been added to improve readability.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture) 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 section implements Tax Code, §171.0003 (Definition of Passive Entity).

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 June 8, 2016.

TRD-201602899

Lita Gonzalez

General Counsel

Comptroller of Public Accounts

Effective date: June 28, 2016

Proposal publication date: May 6, 2016

For further information, please call: (512) 475-0387

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**TITLE 43. TRANSPORTATION**

**PART 13. HIDALGO COUNTY TAX  
ASSESSOR-COLLECTOR**

**CHAPTER 401. MOTOR VEHICLE TITLE  
SERVICES**

**43 TAC §§401.1 - 401.13**

The Hidalgo County Tax Assessor-Collector adopts new 43 TAC §§401.1 - 401.13, concerning the regulation of motor vehicle title services. Sections 401.1 - 401.8 and 401.10 - 401.13 are adopted without changes to the proposed rules as published in February 5, 2016, issue of the *Texas Register* (41 TexReg 950). Section 401.9 is adopted with a minor change and will be republished.

The aim of the new rules is to curb document fraud and vehicle theft. Texas Transportation Code, Chapter 520, Subchapter E regulates motor vehicle title services in counties with a population of more than 500,000. Subchapter E requires motor vehicle title services in these counties to be registered, licensed, and required to maintain records for inspection.

In preparing the new sections, Mr. Villarreal considered processes which require less information from applicants, informal tracking of records, and random document confirmation. However, study and experience lead to the conclusion that public welfare and safety would benefit from clear, consistent, and published standards. Mr. Villarreal also considered assessing lower and higher license fees but concluded that the needs of a border county like Hidalgo are different from the counties that set regulations under 43 TAC §95.1 (Harris County) and 43 TAC §301.1 (Fort Bend County).

The Hidalgo County Tax Assessor-Collector received comments concerning the rules from staff requesting clarification. The Tax Assessor-Collector provided clarification to staff, and no changes were made to the proposed rules. One comment was received from Aline Aucoin, Associate General Counsel from the Texas Department of Motor Vehicles, stating an error was presented in the proposed rule §401.9(a)(4), Denial, Suspension, or Revocation of License. The actual agency that provides administrative procedures is the Texas Department of Motor

Vehicles and not the Texas Department of Transportation. That correction was quickly made.

The Hidalgo County Tax Assessor-Collector adopts the new sections pursuant to Transportation Code, Chapter 520, Subchapter E, which provides the county tax assessor-collector the authority to adopt rules regarding motor vehicle title services.

The new rules do not affect any other statutes, articles, or codes.

*§401.9. Denial, Suspension, or Revocation of License.*

(a) Grounds for the denial, suspension, revocation, or denial of reinstatement of a title service license or title service runner license in Hidalgo County include, but are not limited to:

(1) having been found to have submitted a vehicle packet, or other document, to the Hidalgo County Tax Assessor-Collector's office which contains false information, and the Hidalgo County Tax Assessor-Collector determines that the false information was intentionally submitted by the motor vehicle title service license holder or title service runner;

(2) having been convicted of any felony, any crime of moral turpitude, or deceptive business practice for which the completion date of the applicant's sentence is fewer than five years from the date of applying for a motor vehicle title service license;

(3) having been criminally or civilly sanctioned for the unauthorized practice of law by any government or quasi-government body with jurisdiction to do so;

(4) having been found in violation of the administrative procedures required by the Texas Department of Motor Vehicles;

(5) in the event the Tax Assessor-Collector determines a title service license holder has delinquent Class C misdemeanor fines, the licensee shall have thirty calendar (30) days from the date of deposit of written notice into the U.S. Postal Service to pay or otherwise resolve the fines. If the fines remain unresolved after thirty calendar (30) days, the Tax Assessor-Collector may, in his discretion, deny, suspend, refuse to renew, or revoke, as provided in this section, the license of that title service license holder;

(6) a title service runner license may be revoked or suspended if the title service runner has presented a title packet to the Hidalgo County Tax Assessor-Collector that was not authorized by a licensed motor vehicle title service or if the title service runner altered or forged the original paperwork prepared for and signed by the motor vehicle title service;

(7) failure to maintain records required by §520.057 of the Texas Transportation Code or this section;

(8) behavior that causes disruption or creates a security concern to any tax office location or contracted office location, as determined by the Tax Assessor-Collector or designee, in his discretion; or

(9) involvement in the issuance of fraudulent liability insurance while holding an Hidalgo County title service license, as determined by the Tax Assessor-Collector or designee, in his discretion.

(b) The Hidalgo County Tax Assessor-Collector shall consider any and all substantial evidence available in making factual determinations under this section.

(c) If the Hidalgo County Tax Assessor-Collector makes a determination that a person's license hereunder should be denied, cancelled, suspended, or revoked, then the Tax Assessor-Collector shall send notice of the action to the person, by certified mail, stating the facts or conduct alleged to warrant the action.

(d) Upon a determination of violation of this section, the Hidalgo County Tax Assessor-Collector may order the violator's license suspended for up to one (1) year for the first offense. The Tax Assessor-Collector, in his discretion, may order an additional suspension for up to one year or the revocation of the holder's license for the second offense. A license may be revoked upon a third offense.

(e) A person whose license is revoked may not apply for a new license before the first anniversary of the date of the revocation. A person whose license has been revoked must apply for a new license under this section.

(f) A license may not be issued under a fictitious name that is similar to or may be confused with the name of a governmental entity or that is deceptive or misleading to the public.

(g) The Tax Assessor-Collector may discipline a title service license holder for acts in violation of these regulations or other law committed by a title service runner employed or contracted by the title service license holder. Such discipline may include suspension or revocation of the title service license holder's license if the Tax Assessor-Collector also suspends or revokes the license of the at-fault title service runner.

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 June 9, 2016.

TRD-201602921

Pablo (Paul) Villarreal, Jr.

Tax Assessor Collector

Hidalgo County Tax Assessor-Collector

Effective date: June 29, 2016

Proposal publication date: February 5, 2016

For further information, please call: (956) 318-2157

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