

# PROPOSED RULES

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

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

## TITLE 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 30. COMMUNITY DEVELOPMENT SUBCHAPTER A. TEXAS COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM DIVISION 3. ADMINISTRATION OF PROGRAM FUNDS

##### 4 TAC §§30.50, 30.55, 30.58

The Texas Department of Agriculture (Department) proposes amendments to Title 4, Chapter 30, Subchapter A, Division 3, §§30.50, 30.55, and 30.58, relating to the Texas Community Development Block Grant (CDBG) Program. The Department proposes the amendments to CDBG programs to permit flexibility in the application and eligibility process, and enable maximum benefit to those communities in need.

The Department proposes amendments to §30.50 to revise state scoring criteria of the Community Development Fund and to allow flexibility in Regional Review Committee membership. Amendments to §30.55 allow counties to submit more than one application for the Colonia Fund Construction program. Amendments to §30.58, relating to the Colonia Economically Distressed Areas Program (CEDAP) Set-Aside, will allow flexibility in identifying the funding program partner for CEDAP applications, should the legislature allow CEDAP to partner with programs other than the Texas Water Development Board - Economically Distressed Areas Program.

Suzanne Barnard, Director for CDBG Programs at the Department, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of the proposed rule changes.

Ms. Barnard has also determined that for each year of the first five years these sections are in effect, the public benefit anticipated as a result of administering the sections will be the timely expenditure of federal funding in accordance with federal requirements and the opportunity to apply for additional projects through the modification of program application and eligibility requirements. There will be no adverse economic effect on micro-businesses, small businesses or individuals who are required to comply with the sections.

Written comments on the proposal may be submitted for 30 days following publication of this proposal to Suzanne Barnard, Office of Rural Affairs, Texas Department of Agri-

culture, P.O. Box 12847, Austin, Texas 78711, or by email at [Suzanne.Barnard@TexasAgriculture.gov](mailto:Suzanne.Barnard@TexasAgriculture.gov).

The amendments are proposed under Texas Government Code §487.051, which provides the Department the authority to administer the state's CDBG non-entitlement program, and §487.052, which provides authority for the Department to adopt rules as necessary to implement Chapter 487.

The code affected by the proposal is Texas Government Code Chapter 487.

##### §30.50. *Community Development (CD) Fund.*

(a) - (b) (No change.)

(c) Regional allocations.

(1) Regional review committees (RRC). There is a RRC in each of the 24 state planning regions. Each RRC is comprised of up to [at least] 12 members appointed by the Commissioner, who serve until replaced at the discretion of the Commissioner.

(2) - (3) (No change.)

(d) (No change.)

(e) Scoring criteria.

(1) Department scoring criteria. The following factors are considered by the department when scoring CD Fund applications (detailed application and scoring information are available in the application guidelines):

~~[(A) past awards--whether a community has received Tx CDBG fund awards in the past two application cycles before the application deadline;]~~

(A) ~~[(B)]~~ past performance--the department will consider a community's performance on previously awarded Tx CDBG contracts within the past 4 years preceding the application deadline. (Adjustments may be made for contracts that are engaged in appropriately pursuing due diligence such as bonding remedies or litigation to ensure adequate performance under the Tx CDBG contract.) Evaluation of a community's past performance will include the following:

(i) (No change.)

(ii) submission of environmental review [all contract reporting] requirements within prescribed deadlines; and

(iii) submission of the required close-out documents within the period prescribed for such submission.[;]

~~[(iv) timely response to monitoring findings on previous Tx CDBG contracts; especially any instances when the monitoring findings included disallowed costs;]~~

[(iv\*) timely response to audit findings on previous Tx CDBG contracts; and]

~~[(vi) expenditure timeframes on the applicable Tx-CDBG contracts.]~~

~~(B) [(C)] proposed project--whether all activities proposed in the application involve basic infrastructure (water, sewage, roads, and flood drainage) or housing activities.~~

~~[(D) national objective--whether each proposed project activity will benefit at least 51% LMI persons.]~~

(2) RRC scoring criteria. Each RRC is responsible for determining local project priorities and objective scoring factors for its region in accordance with the requirements of this section and the current Tx-CDBG Action Plan. Each RRC must establish the numerical value of the points assigned to each scoring factor as described in the current Regional Review Committee Guidelines ~~[and determine the total combined points for all RRC scoring factors].~~

(A) Procedures for selecting scoring criteria. The public must be given an opportunity to comment on the priorities and the scoring criteria considered. RRCs are responsible for convening public hearings to discuss and select the objective scoring criteria that will be used to score and rank applications at the regional level.

(i) (No change.)

~~(ii) Attendance at meetings. [A quorum is required for all public meetings.]~~

(I) A quorum is required for all public meetings.

(II) A RRC member may designate a proxy to attend the meeting. Proxies are counted for purposes of determining the presence of a quorum and may vote on all matters before the RRC.

(iii) (No change.)

(B) (No change.)

(f) - (g) (No change.)

§30.55. *Colonia Funds (CF)--General Provisions.*

(a) - (b) (No change.)

~~(c) A community may submit two applications [one application] for Colonia Fund Construction for separate colonia areas, and one application for Colonia Fund Planning (either Area Planning or Comprehensive Planning).~~

(d) - (f) (No change.)

§30.58. *Colonia Economically Distressed Areas Program Set-Aside (CEDAP).*

(a) Eligibility.

(1) - (3) (No change.)

(4) Eligible activities. Eligible CEDAP activities are limited to those that provide assistance to low and moderate income persons residing in colonias who cannot afford the costs of residential service lines, hookups, and minor plumbing improvements associated with connection to a water supply or sewer system, any part of which is financed through the TWDB EDAP or similar federal or state funding as permitted by statute and the current application guide (funding program partner).

(b) Application cycle.

(1) (No change.)

(2) An application may not be submitted until after construction begins on the water or sewer system financed through the funding program partner [TWDB EDAP].

(3) (No change.)

(c) Selection procedures. Applications will be evaluated by the department based on the following factors (detailed application and evaluation information are available in the application guidelines):

(1) the proposed use of the Tx-CDBG funds including the eligibility of the proposed activities and the effective use of the funds to provide water or sewer connections/yard lines to water/sewer systems funded through the funding program partner [TWDB EDAP program];

(2) - (6) (No change.)

[(d) Eligible activities. Eligible CEDAP activities are limited to those that provide assistance to low and moderate income persons residing in colonias who cannot afford the costs of residential service lines, hookups, and minor plumbing improvements associated with connection to a water supply or sewer system, any part of which is financed through the TWDB EDAP.]

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

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

TRD-201603296

Jessica Escobar

Assistant General Counsel

Texas Department of Agriculture

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For further information, please call: (512) 463-4075



## TITLE 22. EXAMINING BOARDS

### PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

#### CHAPTER 1. ARCHITECTS

#### SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

##### 22 TAC §1.22

The Texas Board of Architectural Examiners (Board) proposes the amendment of 22 TAC §1.22, pertaining to registration of architects by reciprocal transfer.

Under Texas law, an applicant for registration as an architect in Texas must qualify either by examination under Occupations Code §1051.705, or through reciprocity based on registration issued by another jurisdiction, under Occupations Code §1051.305.

Section 1051.305 states that a person may apply for reciprocal registration if the person holds an architectural registration that is active and in good standing in another jurisdiction, and the other jurisdiction has licensing or registration requirements substantially equivalent to Texas registration requirements. The Board has adopted §1.22 to define this requirement. Subsection (a)(1) of the rule repeats the statutory requirement that an applicant must hold an active registration in good standing from another jurisdiction with licensing or registration requirements substantially equivalent to Texas registration requirements. Subsection (b)(1) provides more specific requirements, stating that a reciprocity applicant may demonstrate eligibility by either becoming certified by the National Council of Architectural Registration Boards

(NCARB), or by demonstrating completion of the intern development program (IDP) and the architect registration exam (ARE). The rule does not address any specific education requirement, which, along with examination and experience, is the "third leg" of Texas architect registration requirements by examination, as discussed below.

The eligibility requirements for Texas registration by examination, are defined under Occupations Code §1051.705, which states that an applicant for registration by examination must be a graduate of a university or college of architecture approved by the Board and have satisfactory experience in architecture as defined under Board rule. Section 1.21, which further defines the requirements for eligibility by examination, requires applicants to have graduated with a professional degree from an educational program accredited by the National Architectural Accreditation Board (NAAB), in addition to completing IDP and the ARE. Since §1.22(b) does not specifically address educational requirements, it is unclear what level of education a reciprocity applicant must attain in order to demonstrate that he or she holds "a license or certificate of registration issued by another jurisdiction...that has licensing or registration requirements substantially equivalent to those of this state," as required for reciprocity under §1051.305 and §1.22(a).

The purpose of the proposed amendment is to reconcile the Board's reciprocity eligibility rule with the statutory requirements for reciprocity eligibility and, by reference, examination eligibility. The proposed amendment would implement a two-stage adoption of educational requirements for reciprocity eligibility. An Applicant who applies for architectural registration by reciprocity on or before December 31, 2020 would be required to successfully complete a pre-professional bachelor's degree in architecture by a U.S. regionally-accredited institution. An applicant who applies for architectural registration by reciprocity on January 1, 2021 or later would be required to successfully complete a NAAB-accredited professional degree in architecture as described by §1.21(a)(1). Alternatively, the proposed rule would retain the provision that would allow a reciprocity applicant who does not meet the educational requirement to demonstrate eligibility through NCARB certification. NCARB certification is a process by which educational deficiencies resulting from the lack of a NAAB-accredited degree may be supplemented through demonstration of experience in relevant practice areas. This process allows an applicant to demonstrate substantial equivalence with the Board's eligibility requirements, as required by Tex. Occ. Code §1051.305(a)(1) and §1.22(a)(1).

#### Fiscal Note Guidelines

Lance Brenton, General Counsel, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rule is in effect, the amendment will have no significant adverse fiscal impact upon state government, local government, or the Texas Board of Architectural Examiners.

#### Public Benefit/Cost Note Guidelines

For the first five-year period the amended rule is in effect, the expected public benefit is the removal of ambiguity in the Board's reciprocal registration requirements, the promotion of the public health and safety by requiring an appropriate educational background for applicants for architectural registration, and consistency within the Board's rules relating to eligibility requirements for registration by examination and reciprocity, resulting in a substantially equivalent standard for both registration methods.

The cost of compliance with this rule depends on the educational background of the applicant for registration by reciprocity. An individual who applies for reciprocity with a bachelor's degree in architecture prior to December 31, 2020 will not face any additional costs of compliance. An individual with such a degree who applies on January 1, 2021 or later would be eligible for registration by obtaining NCARB certification. The Board is unable to state with certainty what the cost of NCARB certification will be at that time. However, the Board notes that the current cost of NCARB certification for an individual with a bachelor's degree in architecture is \$1,100, provided that the applicant has been registered as an architect in another jurisdiction for at least three years and has completed two times the required hours in the IDP program. Alternatively, such an individual could qualify for NCARB certification without doubling the IDP requirements by undergoing an educational portfolio review, as discussed below.

An individual who seeks reciprocity eligibility without a professional degree or four-year bachelor's degree in architecture will be subject to increased costs of compliance when the proposed rule takes effect. Such an individual would be required to demonstrate eligibility for registration through NCARB certification. An individual without a four-year bachelor's degree in architecture is required to undergo an educational portfolio review by NCARB. During this process, NAAB compares the applicant's educational background with the course of study for an accredited professional degree. If this review identifies educational deficiencies, an experience dossier must be prepared by the applicant that will allow NCARB's committee to review the applicant's work experience to demonstrate learning through experience. An evaluation by NAAB costs \$2,138. The cost of a dossier review by NCARB ranges from \$500 to \$5,000, depending on the extent of an applicant's educational deficiency. It should be noted that the costs of NCARB certification are only necessary for applicants with a four-year degree or less. As such, it is likely that these individuals, who do not meet the standard requirement for a five-year professional degree in architecture, bear a decreased financial cost compared to the cost of an additional year or more of tuition. The amendment to the rule will have no negative fiscal impact on small or micro-business, as current registrants and currently occurring small business activity will be unaffected by the prospective changes to reciprocity eligibility requirements. Therefore, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

#### Public Comment

Comments may be submitted to Lance Brenton, General Counsel, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337. Comments must be received by May 10, 2016.

#### Statutory Authority

The amendment is proposed pursuant to Texas Occupations Code §1051.202, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapters 1051, 1052, and 1053 of the Texas Occupations Code, Texas Occupations Code §1051.705, which grants the Board authority to recognize and approve architecture educational programs, and §1051.305, which grants the Board authority to issue registration by reciprocity for an applicant who holds a license or certificate of registration issued by another jurisdiction that has licensing or registration requirements substantially equivalent to those of Texas.

#### Cross Reference to Statute

The proposed amendments to this rule do not affect any other statutes.

§1.22. *Registration by Reciprocal Transfer.*

(a) A person may apply for architectural registration by reciprocal transfer if the person holds an architectural registration that is active and in good standing in another jurisdiction and the other jurisdiction:

(1) has licensing or registration requirements substantially equivalent to Texas registration requirements; or

(2) has entered into a reciprocity agreement with the Board that has been approved by the Governor of Texas.

(b) In order to obtain architectural registration by reciprocal transfer, an Applicant must demonstrate the following:

(1) the Applicant has:

(A) successfully completed a professional degree in architecture as described by §1.21(a)(1) of this Subchapter;

(B) [(A)] successfully completed the Architect Registration Examination (ARE) or another architectural registration examination which the National Council of Architectural Registration Boards (NCARB) has approved as conforming to NCARB's examination standards; and

(C) [(B)] successfully completed the requirements of the Intern Development Program (IDP) or acquired at least three years of acceptable architectural experience following registration in another jurisdiction; or

(2) the Applicant has been given Council Certification by NCARB and such Council Certification is not currently in an expired or revoked status.

(c) An Applicant who applies for architectural registration by reciprocity on or before December 31, 2020, and otherwise demonstrates satisfaction of all requirements for registration at that time, is not required to complete a professional degree in architecture, as described by §1.21(a)(1) of this Subchapter, provided that the applicant has successfully completed a pre-professional bachelor's degree in architecture by a U.S. regionally accredited institution. This subsection is repealed effective December 31, 2020.

(d) [(e)] An Applicant for architectural registration by reciprocal transfer must remit the required registration fee to the Board within 60 days after the date of the tentative approval letter sent to the Applicant by the Board.

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

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Lance Brenton

General Counsel

Texas Board of Architectural Examiners

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For further information, please call: (512) 305-8519



## TITLE 34. PUBLIC FINANCE

# PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

## CHAPTER 3. TAX ADMINISTRATION SUBCHAPTER V. FRANCHISE TAX

### 34 TAC §3.583

The Comptroller of Public Accounts proposes amendments to §3.583, concerning margin: exemptions. The amendments implement House Bill 500, 83rd Legislature, 2013; House Bill 2358, 84th Legislature, 2015; and Senate Bill 1563, 84th Legislature, 2015.

Throughout the section, titles are added to statutory citations.

Subsection (b)(2), regarding application for exemption, is amended to add new subsection (n), related to out-of-state entities performing disaster- or emergency-related work, to the list of subsections providing an exemption that does not require application under subsection (b). Paragraph (2)(B) is amended for clarity and no substantive change is intended.

Subsection (c)(1) is amended to correct a grammatical error. Paragraph (2)(C) is amended to correctly include a jeopardy determination as a reason for which an entity may request a re-determination hearing when an exemption has been denied or revoked.

The title and contents of subsection (d)(1) are amended to the singular form for consistency with the other paragraphs in this section. The information provided in paragraph (1) is reorganized into subparagraphs (A) - (C) and amended to implement House Bill 500. Subparagraph (A), which provides information on the exemption for insurance organizations authorized to do business in this state, is amended to implement House Bill 500 by deleting the reference to Insurance Code, Chapters 221-224, and inserting instead "authorized to engage in insurance business in this state that are required to pay an annual tax measured by their gross premiums receipts" to identify authorized insurance organizations that are exempt from franchise tax. Subparagraph (B), which provides information on the exemption for insurance organizations not authorized to do business in this state (non-admitted insurance organizations), is also amended to implement House Bill 500, which provides an exemption for a non-admitted insurance organization that pays a gross premiums tax in another state or foreign jurisdiction. A title is added to subparagraph (C), which provides information on the period covered by the exemption, previously provided in subsection (d)(1) without changes. Titles are added to paragraphs (2) - (6) and paragraph (2) is amended for clarity with no substantive change intended.

The title and purpose of subsection (g) are amended to be consistent with other subsections in this section by providing the exemption for an entity with business interest in solar energy devices rather than providing only the definition of "solar energy device." The definition of "solar energy device" remains in the subsection for reference.

The title of subsection (h), exemption for recycling operation, is amended to be consistent with other titles in the section. Also, the definition of "sludge" from Health and Safety Code, §361.003 (Definitions), is added without change.

Subsection (i)(2) and (4) are amended to refer to paragraph (6) of the subsection for information on the meaning of "timely man-

ner." Paragraphs (3), (4), (5) and (6)(B) are amended to correct grammatical errors.

Subsection (j)(2)(A) and (B) are amended to add "for example" to clarify that the information provided in the subparagraphs apply also to other periods, not just the periods specified.

Subsection (k) is amended to add a title and also to include a cooperative credit association, previously omitted in error in this subsection but eligible for exemption under Tax Code §171.076 (Exemption--Cooperative Credit Association).

New subsection (m) is added to implement Senate Bill 1563, which exempts from franchise tax nonprofit corporations created by the TexAmericas Center.

New subsection (n) is added to implement House Bill 2358, which provides a franchise tax exemption for out-of-state business entities performing disaster- or emergency-related work in Texas during a disaster response period. The reference to "transaction of business" in Texas from House Bill 2358 is replaced with a form of "doing business in Texas" to be consistent with Tax Code, §171.001 (Tax Imposed), related to the imposition of the franchise tax. Paragraph (1) provides information regarding notification requirements and paragraph (2) provides definitions for "affiliate," "critical infrastructure," "declared state disaster or emergency," "disaster- or emergency-related work," "disaster response period," "in-state business entity," "mutual assistance agreement," and "out-of-state business entity," taken directly from Business & Commerce Code, §112.003 (Definitions), without change and included as subparagraphs (A) - (H), respectively.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by conforming the rule to current statutes and clarifying agency policy. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed 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 amendments implement Tax Code, §171.052 (Certain Corporations), and §171.086 (Exemption: Political Subdivision Corporation); Business & Commerce Code, §112 (Facilitating Business Rapid Response to State Declared Disasters Act); Special District Local Laws Code, §3503.111 (Nonprofit Corporations); and Local Government Code, §304.001 (Aggregation by Political Subdivisions).

§3.583. *Margin: Exemptions.*

(a) Effective date. This section applies to franchise tax reports originally due on or after January 1, 2008, except as otherwise noted.

(b) Application for exemption. An entity that has not previously established an exemption from franchise tax with the comptroller must apply for an exemption. An entity that is not a corporation, but whose activities would qualify it for a specific exemption under Tax Code, Chapter 171, Subchapter B, if it were a corporation, may qualify for the exemption from the tax in the same manner and under the same conditions as a corporation. See Tax Code, §171.088 (Exemption--Noncorporate Entity Eligible for Certain Exemptions). For provisional exemptions for certain entities, see subsection (i) of this section; for trade show exemptions, see subsection (j) of this section.

(1) An entity that believes it is exempt from [payment of] franchise tax must furnish to the comptroller sufficient evidence to establish its exempt status. The entity claiming the exemption bears the burden to establish its entitlement to exempt status and any doubts will result in a denial of the application for exemption.

(2) Except as otherwise provided in subsections (f), (i), [~~and~~] (j), and (n) of this section, each entity must submit to the comptroller:

(A) a request for exemption in writing, which may require using forms developed by the comptroller for requesting exemptions, indicating the particular provision of Tax Code, Chapter 171, under which exemption is claimed;

(B) a detailed statement of both the entity's past and current activities, if any, and its future plan of activities, each [~~both~~] in relation to the manner in which the entity proposes [~~adopts~~] to implement the purposes clause in its certificate of formation or application for registration;

(C) an entity formed or created under Texas law whose articles of organization or formation is on file with the Texas Secretary of State need not submit copies of those documents with its request for exemption. A Texas entity that is not required to file organizational documents with the Texas Secretary of State must furnish a signed and dated copy of its organizational documents with its exemption request. If a non-Texas entity is required to file articles of organization or formation with its home jurisdiction Secretary of State, or other designated agency or officer, the entity must provide file-stamped copies of those filed organizational or formation documents. If a non-Texas entity is not required to file its articles of organization with the Secretary of State or other authority of its home jurisdiction, it must furnish a signed and dated copy of its organizational or formation documents with its exemption request; and

(D) any additional information the comptroller may require to make a determination whether the entity is eligible for a franchise tax exemption.

(c) Actions by comptroller. Upon receipt of an application for exemption, the comptroller's representative will review the application and send the applicant a notification either granting the exemption or denying the exemption, or requesting additional information.

(1) If the exemption is granted, the exemption will be effective from the first date the entity was eligible for exemption. If the entity paid any franchise taxes prior to the comptroller's notification granting the exemption for a privilege period after the effective date of the exemption, the entity may request a refund, subject to the applicable statute of limitations. If the effective date of the exemption occurs after the beginning of a privilege period, the entity must pay through the end of such privilege period. An entity that has been subject to the tax and

becomes eligible for exemption is liable for the [Tax Code, §171.0014,] additional tax under Tax Code, §171.0011 (Additional Tax).

(2) If the exemption is denied or revoked, the entity may contest the denial or revocation by filing all reports due as required by the comptroller; and

(A) paying all amounts of tax, penalty, and interest due and requesting a refund hearing pursuant to the provisions of Tax Code, Chapter 111 (Collection Procedures);

(B) paying all amounts of tax, penalty, and interest due, accompanying the payment with a written protest, and filing suit for the recovery of amounts paid pursuant to the provisions of Tax Code, Chapter 112 (Taxpayers' Suits); or

(C) requesting a redetermination hearing pursuant to Tax Code, §111.009 (Redetermination), if the comptroller issues a deficiency or jeopardy determination.

(d) Qualification for exemption.

(1) Entity [Entities] subject to insurance premium taxes.

(A) Insurance organization authorized to do business in this state. An [AH] insurance, surety, guaranty, fidelity or [and] title insurance company [companies], title insurance agent [agents], or [and] other insurance organization authorized to engage in insurance business in this state, that is required to pay an annual tax measured by its gross premium receipts is [organizations that are subject to the annual gross premiums tax levied by Insurance Code, Chapters 221 - 224, are] exempt from payment of the franchise tax, regardless of whether any gross premiums taxes are actually paid in any given year.

(B) Insurance organization not authorized to do business in this state (non-admitted insurance organization). A non-admitted insurance [company or] organization [that is] required to pay a gross premium receipts tax during a tax year is exempted from the franchise tax for the same tax year. A non-admitted insurance organization that is subject to an occupation tax or any other tax that is imposed for the privilege of doing business in another state or foreign jurisdiction, including a tax on gross premium receipts, is exempted from the franchise tax.

(C) Period covered. The exemption in this paragraph covers the periods upon which the franchise tax is based, provided the gross premium receipts tax is required to be paid on premiums received or written, as applicable, during the same period. For example, an insurance organization's gross premium receipts tax is due and payable on March 1, 2009, for premiums received during calendar year 2008. The entity would be exempt from franchise tax for the 2009 annual report covering the January 1, 2009 - December 31, 2009, privilege period, for margin attributable to calendar year 2008. An entity is subject to the franchise tax, however, for a tax year in any portion of which it is in violation of an order issued by the Texas Department of Insurance under Insurance Code, §2254.003(b) (Refund or Discount Based on Excessive or Unfairly Discriminatory Premium Rates), that is final after appeal or that is no longer subject to appeal.

(2) Nonprofit entity organized to promote county, city, or another area. A nonprofit entity [These entities] organized for the exclusive purpose of promoting the public interest of any county, city, town, or other area within the state, must show that promotion of the public interest is the exclusive purpose of the entity and not merely an incidental result. An entity will not be considered to be promoting the public interest if it engages in activities to promote or protect the private, business, or professional interests of its members or patronage.

(3) Nonprofit entity organized for religious purposes. A nonprofit entity seeking franchise tax exemption as a religious organi-

zation must be an organized group of people regularly meeting for the primary purpose of holding, conducting, and sponsoring religious worship services according to the rites of their sect. The entity must be able to provide evidence of an established congregation showing that there is an organized group of people regularly attending these services. An entity that supports and encourages religion as an incidental part of its overall purpose, or one whose general purpose is furthering religious work or instilling its membership with a religious understanding, will not qualify for exemption under this provision. No part of the net earnings of the organization may inure to the benefit of any private party or individual other than as reasonable compensation for services rendered to the organization. Some examples of entities that do not meet the requirements for exemption under this definition are conventions or associations of churches, evangelistic associations, churches with membership consisting of family members only, missionary organizations, and groups that meet for the purpose of holding prayer meetings, Bible study or revivals. Although these organizations do not qualify for exemption under this category of exemption as religious organizations, they may qualify for the exemption under Tax Code, §171.063 (Exemption-Nonprofit Corporation Exempt from Federal Income Tax), if they obtain an exemption from the Internal Revenue Service (IRS) under Internal Revenue Code (IRC), §501(c).

(4) Nonprofit entity organized for public charity. A nonprofit entity seeking a franchise tax exemption as organized for purely public charity must devote all or substantially all of its activities to the alleviation of poverty, disease, pain, and suffering by providing food, clothing, drugs, treatment, shelter, or psychological counseling directly to indigent or similarly deserving members of society with its funds derived primarily from sources other than fees or charges for its services. If an entity engages in any substantial activity other than the activities that are described in this paragraph, it will not be considered as having been organized for purely public charity, and therefore, will not qualify for exemption under this provision. No part of the net earnings of the organization may inure to the benefit of any private party or individual other than as reasonable compensation for services rendered to the organization. Some examples of organizations that do not meet the requirements for exemption under this definition are fraternal organizations, lodges, fraternities, sororities, service clubs, veterans groups, mutual benefit or social groups, professional groups, trade or business groups, trade associations, medical associations, chambers of commerce, and similar organizations. Even though not organized for profit and performing services that are often charitable in nature, these types of organizations do not meet the requirements for exemption under this provision. Although these organizations do not qualify for exemption under this category of exemption as charitable organizations, they may qualify for the exemption under Tax Code, §171.063, if they obtain an exemption from the IRS under IRC, §501(c).

(5) Nonprofit entity organized for educational purposes. A nonprofit entity seeking a franchise tax exemption as an educational organization must show that its activities are devoted solely to systematic instruction, particularly in the commonly accepted arts, sciences, and vocations, and has a regularly scheduled curriculum, using the commonly accepted methods of teaching, a faculty of qualified instructors, and an enrolled student body or students in attendance at a place where the educational activities are regularly conducted. An entity that has activities consisting solely of presenting public discussion groups, forums, panels, lectures, or other similar programs, may qualify for exemption under this provision, if the presentations provide instruction in the commonly accepted arts, sciences, and vocations. The entity will not be considered for exemption under this provision if the systematic instruction or educational classes are incidental to some other facet of the organization's activities. No part of the net earnings of the organization may inure to the benefit of any private party or individual other than

as reasonable compensation for services rendered to the organization. Some examples of organizations that do not meet the requirements for exemption under this definition are professional associations, business leagues, information resource groups, research organizations, support groups, home schools, and organizations that merely disseminate information via tangible or electronic media. Although these organizations do not qualify for exemption under this category of exemption as educational organizations, they may qualify for the exemption under Tax Code, §171.063, if they obtain an exemption from the IRS under IRC, §501(c).

(6) Certain homeowners' associations. A nonprofit entity requesting franchise tax exemption as a homeowners' association must prove that it meets all requirements to qualify for the exemption. The entity must show that it is organized and operated to obtain, manage, construct, and maintain the property in or of a residential condominium or residential real estate development. The entity also must prove that the condominium project, or, for a real estate development, the related property, is legally restricted for use as residences. Furthermore, the entity must establish that the collective resident owners of individual lots, residences or units control at least 51% of the votes of the entity and that voting control, however acquired, is not held by: a single individual or family; one or more developers, declarants, banks, investors, or other similar parties. For example, an association is formed for a residential condominium consisting of 12 units with each unit being entitled to one vote. Each of five individuals separately owns and occupies one unit, a total of five units. A sixth individual owns two units, living in one unit and leasing the other. A seventh individual owns and leases the remaining five units. None of the owners are related. In determining whether the collective resident owners control at least 51% of the votes of the organization, the sixth owner is a resident owner regarding the one unit in which the owner lives and an investor regarding the other. The collective resident owners, therefore, have a total of six votes. Consequently, since the collective resident owners only have 50% of the votes of the entity, the association does not meet the requirement that the resident owners must control at least 51% of the votes of the organization. Accordingly, the entity does not qualify for the franchise tax exemption as a homeowners' association.

(e) Revocation, withdrawal, or loss of exemptions.

(1) An entity that no longer qualifies for the franchise tax exemption is required to notify the comptroller in writing of its change in status. Except as provided in paragraph (2) of this subsection, if at any time the comptroller has reason to believe that an exempt entity no longer qualifies for exemption, the comptroller's representative will notify the entity that its exempt status is under review. The comptroller's representative may request additional information necessary to ascertain the continued validity of the entity's exempt status. If the comptroller determines that an entity is no longer entitled to its exemption, notification to that effect will be sent to the entity. The effective date of revocation is the date the entity no longer qualified for the exemption. The day immediately following the date of withdrawal, loss, or revocation shall be the beginning date for determining the entity's privilege period and for all other purposes related to franchise tax.

(2) For nonprofit entities granted an exemption under Tax Code, §171.063, the revocation, withdrawal, or loss of the federal income tax exemption automatically terminates the franchise tax exemption. A nonprofit entity that no longer qualifies for the federal income tax exemption which was the basis for obtaining the franchise tax exemption must notify the comptroller in writing within 30 days of its change in status and must provide a copy of the notice of such revocation, withdrawal, or loss. The effective date of withdrawal or loss is the date of withdrawal or loss of the federal tax exemption. The effective date of a revocation is the date the IRS serves written notice of

the revocation to the non-profit entity or the date the IRS serves written notice of revocation to the comptroller, whichever is earlier. The day immediately following the date of withdrawal, loss, or revocation shall be the entity's beginning date for determining its privilege periods and for all other purposes of the franchise tax.

(3) An electric cooperative entity previously exempted from franchise tax under Tax Code, §171.079 (Exemption--Electric Cooperative Corporation), that subsequently participates in a joint powers agency thereby loses its franchise tax exemption. The commencing date of participation in the joint powers agency shall be considered the entity's beginning date for purposes of determining the entity's privilege periods and for all other purposes of the franchise tax. The electric cooperative must notify the comptroller in writing that it is a participant in a joint powers agency within 30 days after the commencing date of its participation.

(f) Federal exemption. An entity meeting the requirements of any paragraph of this subsection establishes its exempt status by furnishing to the comptroller a copy of a current exemption letter from the IRS.

(1) A nonprofit entity that has been exempted from federal income tax under the provisions of IRC, §501(c)(3) - (8), (10), (19); or

(2) any entity that has been exempted from federal income tax under the provisions of IRC, §501(c)(2) or (25), if the entity or entities for which it holds title to property are either exempt from or not subject to the franchise tax; and

(3) any entity that has been exempted from federal income tax under IRC, §501(c)(16).

(g) Solar energy devices exemption. An entity engaged solely in the business of manufacturing, selling, or installing solar energy devices is exempted from the franchise tax. [~~Solar energy device.~~] For purposes of this section [Tax Code, §171.056], the term "solar energy device" includes, but is not limited to:

(1) devices used in the conversion of solar thermal energy into electrical or mechanical power;

(2) devices used in the photovoltaic (solar cell) generation of electricity;

(3) systems used in the heating of water and the heating and cooling of structures by use of solar collectors to gather the sun's energy; and

(4) heat pumps used as an integral part of a system designed to make the best combined use of solar energy and conventional heating.

(h) Recycling [~~Exemption for recycling~~] operation exemption. An entity engaged solely in the business of recycling sludge [as defined by Health and Safety Code, Chapter 361, Solid Waste Disposal Act, §361.003,] is exempt from franchise tax. For purposes of this subsection, "sludge" means solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility, excluding the treated effluent from a wastewater treatment plant, as provided under Health and Safety Code, Chapter 361 (Solid Waste Disposal Act), §361.003 (Definitions).

(i) Provisional exemptions.

(1) If established with the comptroller, the following entities may be granted a temporary exemption from franchise tax:

(A) a nonprofit entity that has applied for exemption from federal income tax under IRC, §501(c)(3) - (8), (10), (19); or

(B) an entity that has applied for exemption from federal income tax under IRC, §501(c)(2) or (25), if the entity or entities for which it holds title to property is either exempt from or not subject to the franchise tax; and

(C) an entity that has applied for exemption from federal income tax under IRC, §501(c)(16).

(2) To obtain a temporary franchise tax exemption with the comptroller, an entity that has applied for but has not yet received a letter of exemption from the IRS must timely file, as provided in paragraph (6) of this subsection, with the comptroller:

(A) a copy of the application for recognition of exemption that has been filed with the IRS; and

(B) a copy of:

(i) a written notice from the IRS stating that the application for recognition of exemption has been received; or

(ii) a receipt as proof that the application has been sent to the IRS by means of the United States Postal Service, other carrier, or hand delivery to the IRS.

(3) Paragraph [Paragraphs] (2)(A) and [(2)] (B)(ii) of this subsection, applies [apply] only if the organization has filed its application for recognition of exemption during the 14th or 15th month after its beginning date. Beginning date means:

(A) for an entity organized under the laws of this state, the date on which the entity's certificate of formation or other similar document takes effect; and

(B) for a foreign entity, the date on which the entity begins doing business in this state.

(4) If the information required in paragraph [paragraphs] (2)(A) and (B)(i) of this subsection is provided in a timely manner, as provided in paragraph (6) of this subsection, a 90-day provisional franchise tax exemption will be granted.

(5) An entity qualifying under paragraph [paragraphs] (2)(A) and (B)(ii) of this subsection, will be granted a 90-day provisional exemption with the condition that a copy of the notice required in paragraph (2)(B)(i) of this subsection be provided to the comptroller within 30 days from the date of the letter notifying the entity of the provisional exemption. If the IRS notification is not provided within the 30-day period, the provisional exemption will be canceled. An entity whose provisional exemption is canceled will be subject to all tax, penalty, and interest that has accrued since the entity's beginning date.

(6) The information necessary for obtaining a temporary franchise tax exemption will be considered to be provided to the comptroller in a timely manner if:

(A) the application for recognition of exemption is provided to the IRS within their timely filing guidelines; and

(B) the information required in paragraph [paragraphs] (2)(A) and (B)(i) or (B)(ii) of this subsection, is postmarked within 15 months after the day that is the last day of a calendar month and that is nearest to the entity's beginning date.

(7) Before the expiration of the 90-day provisional exemption, the entity must provide the comptroller a copy of the letter from the IRS showing that the decision on the federal exemption is still pending or stating that the federal exemption is either granted or denied.

(8) If the comptroller is notified as required in paragraph (7) of this subsection, that the decision on the federal exemption is still pending, an extension of the provisional exemption may be considered.

(9) If the information in paragraph (7) of this subsection, is not provided as required, the provisional exemption may be canceled. If the provisional exemption is canceled, the entity will be responsible for all franchise tax reports and payments that have become due since its beginning date, and penalty and interest will be based on the original due date of each report.

(10) An entity that provides the comptroller a copy of the letter from the IRS stating that the federal exemption has been granted will be considered for franchise tax exemption under subsection (f) of this section.

(11) If the federal exemption is denied by the IRS, the entity is responsible for all franchise tax reports and payments that have become due since its beginning date and interest will be based on the original due date of each report. Late filing and payment penalties will be waived for any reports and payments postmarked within 90 days after the date of the final denial of the federal exemption. The penalty waiver process will begin when the entity submits a written request for penalty waiver and a copy of the letter denying the federal exemption when filing reports and payment.

(j) Trade show exemption. See Tax Code, §171.084 (Exemption--Certain Trade Show Participants), for the requirements for exemption for certain foreign entities that participate in trade shows in Texas.

(1) Notification to comptroller. Entities need not apply for an exemption under Tax Code, §171.084.

(A) If a foreign entity has obtained a registration or has already notified the comptroller that it is doing business in Texas, the entity must notify the comptroller in writing by the due date of the first report for which the entity is exempt that the report and payment are not due because the entity is exempt under Tax Code, §171.084. After such notification, the entity must notify the comptroller in writing only when the organization no longer qualifies for exemption.

(B) If a foreign entity has not obtained a registration or otherwise qualified to do business in the state, if applicable, and if the entity has not notified the comptroller that it is doing business in Texas, the entity must notify the comptroller in writing only when the entity no longer qualifies for exemption under Tax Code, §171.084. There is no need to apply for exemption as long as the entity qualifies for the exemption.

(2) Solicitation periods. If the solicitation of orders is conducted during more than five periods during the business period upon which tax is based as set out in Tax Code, §171.1532 (Business on Which Tax on Net Taxable Margin is Based), the entity does not qualify for exemption.

(A) For example, an [An] entity with its fiscal year ending December 31, 2008, that filed a 2008 annual report, will not have to file and pay a 2009 annual report if it did not solicit orders for more than five periods during 2008.

(B) For example, assume [Assume] a foreign entity participated in its first trade show in Texas on April 1, 2008. It also participated in trade shows in 2009 on January 1, March 1, May 1, June 1, August 1, and October 1. The entity's fiscal year ends are December 31, 2008, and 2009. The entity would be exempt for its initial report and payment (covering the privilege periods from April 1, 2008 - December 31, 2009) because it only solicited for one period from April 1, 2008 - December 31, 2008 (i.e., the business upon which the initial

report is based). The entity would be required to file a 2010 annual report and pay tax, however, because it solicited for six periods from January 1, 2009 - December 31, 2009 (i.e., the period upon which the 2010 annual report is based).

(3) One hundred twenty hours. A solicitation period may not exceed 120 consecutive hours. If the solicitation of orders is conducted during a single period of more than 120 consecutive hours, the entity does not qualify for exemption. For example, an entity that meets the other requirements of Tax Code, §171.084, will meet the 120 hours requirement if the solicitation occurs Monday - Friday, but will not meet the 120 hours requirement if the solicitation occurs Monday - Saturday. If none of the solicitation limits prescribed in this subsection are exceeded, an entity may qualify for the exemption even if it leases space at a wholesale center for the entire period upon which the tax is based.

(k) Credit association exemption. A cooperative credit association incorporated under Agriculture Code, Chapter 55 (Cooperative Credit Associations), an [An] entity organized under 12 U.S.C. §2071, or an agricultural credit association regulated by the Farm Credit Administration is exempt from franchise tax.

(l) Bingo unit exemption. For reports originally due on or after October 1, 2009, a bingo unit formed under Occupations Code, Chapter 2001, Subchapter I-1 (Unit Accounting), is exempt from franchise tax. "Unit" means two or more licensed authorized organizations that conduct bingo at the same location joining together to share revenues, authorized expenses, and inventory related to bingo operation.

(m) TexAmericas Center nonprofit corporation exemption. Effective June 16, 2015, a nonprofit entity created by the TexAmericas Center under Special District Local Laws Code, §3503.111 (Nonprofit Corporations), is exempt from franchise tax.

(n) Disaster response exemption for an out-of-state business entity. Effective June 16, 2015, an out-of-state business entity is not required to file a franchise tax report with or pay franchise tax to this state if the performance of disaster- and emergency-related work during a disaster response period is the only business the entity does in Texas. An out-of-state business entity that remains in Texas after a disaster response period is not entitled to this exemption.

(1) Notification to comptroller. An entity need not apply for an exemption from franchise tax under Business & Commerce Code, §112.004 (Exemption of Out-of-State Business Entity From Certain Obligations During Disaster Response Period). An entity must notify the comptroller in writing only when the entity no longer qualifies for the exemption.

(2) Definitions. For the purpose of this subsection, the terms defined in subparagraphs (B) - (H) of this paragraph have the meanings given in Business & Commerce Code, §112.003 (Definitions).

(A) Affiliate--A member of a combined group as that term is described by Tax Code §171.1014 (Combined Reporting; Affiliated Group Engaged in Unitary Business).

(B) Critical infrastructure--Equipment and property that is owned or used by a telecommunications provider or cable operator or for communications networks, electric generation, electric transmission and distribution systems, natural gas and natural gas liquids gathering, processing, and storage, transmission and distributions systems, and water pipelines and related support facilities, equipment, and property that serve multiple persons, including buildings, offices, structures, lines, poles, and pipes.

(C) Declared state disaster or emergency--A disaster or emergency event that occurs in this state and:

(i) in response to which the governor issues an executive order or proclamation declaring a state of disaster or a state of emergency; or

(ii) that the president of the United States declares a major disaster or emergency.

(D) Disaster- or emergency-related work--Repairing, renovating, installing, building, rendering services, or performing other business activities relating to the repair or replacement of critical infrastructure that has been damaged, impaired, or destroyed by a declared state disaster or emergency.

(E) Disaster response period--

(i) the period that:

(I) begins on the 10th day before the date of the earliest event establishing a declared state disaster or emergency by the issuance of an executive order or proclamation by the governor or a declaration of the president of the United States; and

(II) ends on the earlier of the 120th day after the start date or the 60th day after the ending date of the disaster or emergency period established by the executive order or proclamation or declaration, or on a later date as determined by an executive order or proclamation by the governor; or

(ii) the period that, with respect to an out-of-state business entity:

(I) begins on the date that the out-of-state business entity enters this state in good faith under a mutual assistance agreement and in anticipation of a state disaster or emergency, regardless of whether a state disaster or emergency is actually declared; and

(II) ends on the earlier of the date that the work is concluded or the seventh day after the out-of-state business entity enters this state.

(F) In-state business entity--A domestic entity or foreign entity that is authorized to transact business in this state immediately before a disaster response period.

(G) Mutual assistance agreement--An agreement to which one or more business entities are parties and under which a public utility, municipally owned utility, or joint agency owning, operating, or owning and operating critical infrastructure used for electric generation, transmission, or distribution in this state may request that an out-of-state business entity perform work in this state in anticipation of a state disaster or emergency.

(H) Out-of-state business entity--A foreign entity that enters this state at the request of an in-state business entity under a mutual assistance agreement or is an affiliate of an in-state business entity and;

(i) that:

(I) except with respect to the performance of a disaster- or emergency-related work:

(-a-) has no physical presence in this state and is not authorized to transact business in this state immediately before a disaster response period; and

(-b-) is not registered with the secretary of state to transact business in this state, does not file a tax report with this state or a political subdivision of this state, and does not have nexus with this state for the purpose of taxation during the year immediately preceding the disaster response period; and

(II) enters this state at the request of an in-state business entity, the state, or a political subdivision of this state to perform disaster- or emergency-related work in this state during the disaster response period; or

(ii) that performs work in this state under a mutual assistance agreement.

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

Filed with the Office of the Secretary of State on June 30, 2016.

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Lita Gonzalez

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: August 14, 2016

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



## **TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

### **PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY**

#### **CHAPTER 16. COMMERCIAL DRIVER LICENSE**

##### **SUBCHAPTER A. LICENSING REQUIREMENTS, QUALIFICATIONS, RESTRICTIONS, AND ENDORSEMENTS**

###### **37 TAC §§16.1 - 16.7**

The Texas Department of Public Safety (the department) proposes new §§16.1 - 16.7, concerning Licensing Requirements, Qualifications, Restrictions, and Endorsements. This proposal is necessary to align commercial driver licensing requirements with existing federal regulations governing commercial drivers.

In the May 6, 2016, issue of the *Texas Register* (41 TexReg 3254), the department published proposed new §§16.1 - 16.7. The department received comments on the May 6th proposal from numerous members of the commercial driving community. In response to their written comments, the department withdrew the May 6th proposal and is republishing this proposal.

Several of the comments received pertained to §16.1(2)(G) which excepted from adoption 49 CFR §383.75, regarding third party commercial driver license skill testing. These commenters expressed the desire to have the flexibility to provide third party commercial skills testing to commercial driver license applicants in Texas. In response to their written comments, the department deleted the exception noted in §16.1(2)(G). While this change will not allow the department to immediately establish a third party commercial driver license skills testing program, the incorporation and adoption by reference of 49 CFR §383.75 will provide the department with the flexibility to adopt rules regarding third party commercial skills testing at a later date if the department chooses to take such action and will avoid confusion among the commercial driving community since that

provision is referenced in §522.023 of the Texas Transportation Code

Additionally, the department received one comment related to the inclusion of the word "only" in §16.2(5) concerning the definition of recreational vehicle. The department included "only" in error so the word has been deleted from §16.2(5) in order to conform the language to §522.004(a)(4) and §522.004(b) of the Texas Transportation Code.

No changes have been made to §§16.3 - 16.7 from the original May 6th proposal.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be the alignment of both state and federal commercial driver license laws, thereby increasing effective enforcement and compliance of commercial laws.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Ron Coleman, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to DLDrulecomments@dps.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §522.005, which authorizes the department to adopt rules necessary to carry out Chapter 522 and the federal act and to maintain compliance with 49 CFR Parts 383 and 384.

Texas Government Code, §411.004(3) and Texas Transportation Code, §522.005 are affected by this proposal.

###### §16.1. General Requirements.

All rules and regulations adopted in this chapter apply to every person, including employers of such persons, who holds a Texas commercial

driver license (CDL) or operates a commercial motor vehicle (CMV) in this state, regardless if they are operating in interstate, foreign, or intrastate commerce.

(1) The department incorporates by reference and adopts:

(A) The Federal Motor Carrier Safety Regulations, Title 49, Code of Federal Regulations (CFR) Part 383 including all interpretations thereto, as amended through March 1, 2016. Where there is conflict between 49 CFR Part 383 and Texas Transportation Code, Chapter 522, Texas Transportation Code, Chapter 522 controls.

(B) 49 CFR §390.5.

(2) The CFRs detailed in this paragraph are excepted from adoption:

(A) 49 CFR §383.3(d)(3).

(B) 49 CFR §383.3(e).

(C) 49 CFR §383.3(g).

(D) 49 CFR §383.31(a).

(E) 49 CFR §383.31(b).

(F) 49 CFR §383.51(c)(9).

(G) 49 CFR §383.153(10).

### §16.2. Chapter Definitions.

The terms in this section have the following meanings when used in this chapter unless the context clearly indicates otherwise.

(1) Act--Texas Transportation Code, Chapter 522.

(2) Disqualifying offense--Has the meaning assigned by Texas Transportation Code, §522.081.

(3) Knowledge exam--Written, computerized, or automated exam.

(4) Out-of-service order--Has the meaning assigned by 49 CFR §383.5 or Texas Transportation Code, §522.003(23).

(5) Recreational vehicle--A vehicular type unit primarily designed as temporary living quarters for recreational camping or travel use that either has its own mode of power or is mounted on or towed by another vehicle and is driven for personal use.

(6) Serious traffic conviction--Has the meaning assigned by Texas Transportation Code, §522.003.

(7) Serious traffic violation--Has the meaning assigned by Texas Transportation Code, §522.003(25) and §16.62 of this title (relating to Serious Traffic Violations and Habitual Violators).

(8) Skills exam--Driver or road exam.

### §16.3. Persons Exempted.

Persons exempted from commercial driver license (CDL) requirements are:

(1) A person operating a vehicle that is controlled and operated by a farmer which is used to transport agricultural products, farm machinery, or farm supplies to or from a farm and which is not used in the operations of a common or contract carrier and used within 150 miles of the person's farm.

(A) Under this exemption, a rancher is considered a farmer.

(B) A farmer and his farmhands are equally exempt when the farmhands are in the employ of the farmer.

(C) One who purchases a crop in a field and only harvests and transports the produce, but takes no part in the planting and cultivating of the product, is not considered a farmer.

(D) One who purchases acres of growing timber and cultivates and harvests it over a period of months or years is considered a farmer.

(2) A person operating a fire fighting or emergency vehicle necessary to the preservation of life or property or the execution of emergency governmental functions, whether operated by an employee of a political subdivision or by a volunteer fire fighter, or a fire fighter employed by a private company, for example, a refinery. This would not exempt operators of vehicles used by utility companies.

(A) Drivers of industrial emergency response vehicles, including an industrial ambulance are exempt only if the vehicle is operated in compliance with criteria established by the Texas Industrial Fire Training Board or the State Firemen's and Fire Marshall's Association of Texas.

(B) Drivers of public or private ambulances are exempt only if they have been issued a license by the Department of State Health Services.

(C) Electric company employees repairing downed power lines are not exempt.

(3) A person operating a military vehicle or a commercial motor vehicle, when operated for military purposes by military personnel, members of the reserves and national guard on active duty (including personnel on full-time national guard duty), personnel on part-time training duty, and national guard military technicians. This exemption includes the operation of vehicles leased by the United States government for use by the military branches of government.

(4) A person operating a vehicle that is a recreational vehicle that is driven for personal use.

(A) For purposes of this exemption recreational vehicle means a vehicular type unit primarily designed as temporary living quarters for recreational camping or travel use that either has its own motive power or is mounted on or towed by another vehicle.

(B) This exemption includes travel trailers, camping trailers, truck campers, and motor homes.

(5) A person operating a vehicle that is owned, leased, or controlled by an air carrier, as defined by Texas Transportation Code, §21.155(d), and that is driven or operated exclusively by an employee of the air carrier only on the premises of an airport, as defined by Texas Transportation Code, §22.001(2), on service roads to which the public does not have access.

(6) A person operating a vehicle used exclusively to transport seed cotton modules or cotton burrs.

### §16.4. Manufactured Housing.

Drivers who transport manufactured housing on highways must have the proper commercial driver license (CDL) if the vehicle meets the weight criteria for a commercial motor vehicle (CMV) as defined in 49 CFR §390.5. In determining whether the towed unit exceeds 10,000 pounds and whether the gross combination weight rating (GCWR) totals 26,001 or more pounds, the manufactured housing being drawn and trailers carrying the manufactured housing are motor vehicles for purposes of the Act.

### §16.5. Qualifications to Drive in Intrastate Commerce.

A person applying for a commercial driver license (CDL) which authorizes operation of a commercial motor vehicle (CMV) in intrastate

commerce must meet the same requirements as those for interstate driving (49 CFR § 391.41), except for:

(1) The applicant must be at least 18 years of age.

(2) The applicant must have held a driver license for a minimum of 3 years.

(3) An applicant may present the department's vision or limb waiver certificate instead of meeting the vision or physical requirements of 49 CFR §391.41. Waivers may only be renewed through the Texas Department of Public Safety, Driver License Division/Enforcement and Compliance Service, P.O. Box 4087, Austin, Texas 78773-0310.

(4) A driver who operates a motor vehicle in intrastate commerce only, and does not transport property requiring a hazardous material placard, and was regularly employed operating a CMV in Texas prior to August 28, 1989, is not required to meet the federal physical and vision standards.

(5) A driver who operates a CMV in intrastate commerce only may obtain a vision or limb waiver from the department provided the qualifications detailed in this section are met: (Only one waiver can be used to obtain a CDL.)

(A) Vision waiver requirements:

(i) The applicant has 20/40 (Snellen) or better distant visual acuity with corrective lenses in the better eye; or

(ii) The applicant's vision is uncorrectable in one eye and the applicant does not wear corrective lenses, then uncorrected vision must be at least 20/25 (Snellen) in the better eye;

(iii) The applicant has the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber, and

(iv) The applicant must present a medical certificate as required under 49 CFR §391.43.

(v) Applicants may be referred to a vision specialist in cases involving a failure on the vision examination:

(I) When the applicant protests the results of the vision examination; or

(II) When other conditions necessitate verification by a medical professional.

(B) Limb waiver requirements:

(i) Medical certificate required under 49 CFR §391.43; and

(ii) Pass a comprehensive driving examination in the appropriate class vehicle (equipped with all necessary vehicle modifications) for the CDL for which the applicant is applying.

(6) Applications for a Texas intrastate vision or limb waiver will include a review of the applicant's driving record for the three-year period immediately preceding the date of the application. An applicant may obtain a waiver from the department only if their driving record:

(A) contains no suspensions, revocations, disqualifications or cancellations of the driver license based on an alcohol, drug or driving related conviction or an administrative action resulting from the operation of any motor vehicle, including a personal vehicle;

(B) contains no involvement in a crash for which a citation was issued resulting in a conviction for a moving violation;

(C) contains no convictions for a disqualifying offense or more than one serious traffic conviction during the three-year period, which disqualified or should have disqualified the applicant in accordance with the driver disqualification provisions of Texas Transportation Code, §522.081; or

(D) contains no more than two convictions for moving violations in a CMV.

(7) If the driving record shows either convictions for moving violations or crash involvement but does not indicate the type of vehicle operated or the number of miles per hour above the posted speed limit, the department may request additional official documentation (e.g., a copy of the citation or crash report, or copies of court records) from the applicant.

(8) If the applicant is arrested, cited for, or convicted of any disqualifying offense or other moving violations during the period an application is pending, the applicant must immediately report such arrests, citations, or convictions to the Texas Department of Public Safety, Driver License Division/Enforcement and Compliance Service, P.O. Box 4087, Austin, Texas 78773-0310. No waiver determination will be completed while any charge against the applicant, for what would be a disqualifying offense, is still pending. Convictions occurring during the processing of an application will be considered in the overall driving record. The applicant must also report any conviction that is not listed on the driving record because of processing delays. If a subsequent review of the applicant's driving record identifies incidents that should have been reported, any waiver issued may be revoked.

(9) Applicants for a Texas intrastate vision or limb waiver must be able to meet all other physical requirements specified in 49 CFR §391.41 without the benefit of any other waiver.

(10) Applicants for a CDL must present a valid vision or limb waiver certificate obtained from the department's Enforcement and Compliance Service in Austin. A vision waiver may be used to obtain a Hazardous Materials Endorsement; however, a limb waiver cannot be used to obtain this endorsement.

(11) All recipients of a Texas intrastate vision/limb waiver will be required to have a license with the appropriate restrictions as they apply. Waiver recipients will be notified in writing by means of the most recent address on file of the requirement to add the restrictions and will be given 60 days to comply. Failure to comply within the specified period may result in the revocation of any waiver and their disqualification as a CMV driver.

(12) Applications for the renewal of the vision or limb waiver certificates will be granted provided the applicant's driving history continues to meet the requirements as detailed in paragraph (5) of this subsection and the applicant for:

(A) a vision waiver continues to meet the vision standards listed in paragraph (5)(A) of this subsection and all other requirements of 49 CFR §391.41; or

(B) a limb waiver certificate continues to meet all other requirements of 49 CFR §391.41.

(13) Applicants denied a vision/limb waiver may appeal the decision of the department by contacting the department's designee, in writing, within 20 days after receiving notification of the denial. The request for an appeal must contain the name, address, and driver license number of the applicant, the reasons why the waiver should be granted, and include all pertinent documents which support the reasons why the waiver should be granted. The denial is stayed pending the review of the director or his designee. The decision of the department's designee is final.

(14) Waiver certificates will be approved by department's designee and are valid for a period not to exceed 2 years after the date of the applicant's medical examiner's physical examination.

(15) If the vision or limb waiver application is approved, the applicant must obtain a CDL with the appropriate restrictions within 60 days of the approval. Failure to obtain the CDL with the appropriate restrictions within the 60 day period may result in the cancellation of the waiver certificate. Any cancellations will require the applicant to reapply for the waiver.

(16) If the vision or limb waiver application is denied and the applicant currently holds a CDL, the CDL privilege will be cancelled and a demand for the surrender of the CDL will be made.

(17) If the holder of a Texas vision/limb waiver fails to renew the waiver, the driver will be notified in writing by the department of this requirement via the most recent address on file. Proper notification is presumed if the notification is mailed by first-class mail to the applicant or licensee at the last mailing address on file with the department. Failure to comply within a 60 day period may result in the cancellation of their CDL and the demand for the surrender of the CDL currently held.

(18) Prior to the renewal of their CDL those applicants who were previously issued a vision waiver with an indefinite expiration date must comply with this section in order to retain their CDL. Notice of this requirement will be sent to the mailing address on record. Failure to comply with this section will result in the denial of their renewal application and the cancellation of their CDL operating privilege.

#### §16.6. Farm-Related Service Industry Waiver.

(a) The department must waive the commercial driver license (CDL) knowledge and skill exams required by Texas Transportation Code, §522.022, and provide for the issuance of a restricted CDL to an employee of a farm-related service industry (FRSI) in accordance to 49 CFR 383. The department is subject to any condition or requirement established for the waiver by the Federal Highway Administration. In addition to any restriction or limitation imposed by this section, a restricted CDL issued under this regulation is subject to any restriction or limitation imposed by the secretary of the highway administration.

(b) Fees for an FRSI CDL are the same as for a regular CDL and will be calculated the same way. A \$10 duplicate fee must be charged each time an applicant revalidates the waiver period.

(c) The FRSI CDL must have a P restriction. The validity period must be continuous, for a minimum period of 30 days, and cannot exceed 180 days in any 12 month period. The FRSI CDL cannot be renewed more than 30 days prior to the expiration date of the existing FRSI CDL issuance period and cannot exceed the expiration date of the CDL.

#### §16.7. Proof of Domicile.

(a) A person applying for a commercial driver license (CDL) which authorizes operation of a commercial motor vehicle (CMV) in interstate commerce must be domiciled in Texas. For purposes of this requirement, the state of domicile means the state where a person has the person's true, fixed, and permanent home and principal residence and to which the person intends to return whenever absent. A person may have only one state of domicile.

(b) In order to prove domicile, all original applicants for a CDL must present two acceptable documents verifying the applicant's domicile address in Texas.

(c) The department may require individuals renewing or obtaining a duplicate CDL to present proof of domicile prior to issuance.

(d) In order to satisfy the requirements of this section the individual must provide two documents, which contain the applicant's name and domicile address, from the acceptable proof of domicile list in subsection (e) of this section.

(e) Acceptable proof of domicile documents are:

(1) A deed, mortgage, monthly mortgage statement, current mortgage payment booklet, or a current residential rental/lease agreement.

(2) A valid, unexpired Texas voter registration card.

(3) A valid, unexpired Texas motor vehicle registration or title.

(4) A valid, unexpired Texas boat registration or title.

(5) A valid, unexpired Texas license to carry a handgun.

(6) An electric, water, natural gas, satellite television, cable television, or non-cellular telephone statement dated within 90 days of the date of application.

(7) A Selective Service card.

(8) A medical or health card.

(9) A current homeowners' or renters' insurance policy or homeowners' or renters' insurance statement.

(10) A current automobile insurance policy or an automobile insurance statement.

(11) A Texas high school, college, or university report card or transcript for the current school year.

(12) A W-2 or 1099 tax form from the current tax year.

(13) Mail from financial institutions; including checking, savings, investment account, and credit card statements dated within 90 days of the date of application.

(14) Mail from a federal, state, county, or city government agency dated within 90 days of the date of application.

(15) A current automobile payment booklet.

(16) A pre-printed paycheck or payment stub dated within 90 days of the date of application.

(17) Current documents issued by the U.S. military indicating residence address.

(18) A document from the Texas Department of Criminal Justice indicating the applicant's recent release or parole.

(f) Both documents may not be from the same source. For example, an individual may not use vehicle registration and vehicle title for the same or different vehicles from the same registration office or a water and gas bill from the same utility. Mail addressed with a forwarding label or address label affixed to the envelope or contents are not acceptable.

(g) If the individual cannot provide two documents from the acceptable proof of domicile list, the individual may submit a Texas residency affidavit submitted by:

(1) An individual who resides at the same residence address as the applicant.

(A) For related individuals, the applicant must present a document acceptable to the department indicating a family relationship to the person who completed the Texas residency affidavit and present two acceptable proof of domicile documents with the name of the person who completed the Texas residency affidavit. Acceptable

documents demonstrating family relationship may include but are not limited to:

- (i) marriage license;
- (ii) military dependent identification card;
- (iii) birth certificate; and
- (iv) adoption records.

(B) For unrelated individuals, the individual must accompany the applicant, present a valid Texas driver license or identification card, and present two acceptable proof of domicile documents from the acceptable proof of domicile list in subsection (d) of this section.

(2) A representative of a governmental entity, not-for-profit organization, assisted care facility/home, adult assisted living facility/home, homeless shelter, transitional service provider, or group/half way house certifying to the address where the applicant resides or receives services. The organization must provide a notarized letter verifying that they receive mail for the individual.

(h) An individual is not required to comply with this section if the applicant is subject to the address confidentiality program administered by the Office of the Attorney General, judicial address confidentiality under Texas Transportation Code, §521.121, or currently incarcerated in a Texas Department of Criminal Justice facility.

(i) All documents submitted by an individual must be acceptable to the department. The department has the discretion to reject or require additional evidence to verify domicile address.

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

Filed with the Office of the Secretary of State on June 30, 2016.

TRD-201603301

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: August 14, 2016

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



## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES**

#### **CHAPTER 95. MEDICATION AIDES--PROGRAM REQUIREMENTS**

**40 TAC §§95.101, 95.103, 95.105, 95.107, 95.109, 95.113, 95.115, 95.117, 95.119, 95.121, 95.123, 95.125, 95.127 - 95.129**

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §§95.101, 95.103, 95.105, 95.107, 95.109, 95.113, 95.115, 95.117, 95.119, 95.121, 95.123, 95.125, 95.127, and 95.128; and new §95.129, in Chapter 95, Medication Aides--Program Requirements.

## **BACKGROUND AND PURPOSE**

The proposed amendments and new section in Chapter 95 provide that DADS does not issue or renew a permit if an applicant or a medication aide is listed as unemployable on the Employee Misconduct Registry (EMR), listed as revoked on the Nurse Aide Registry (NAR), or has been convicted of certain offenses. The proposed amendments specify criteria used to determine if a renewal application is late and allow DADS to use an applicant's email address of record as contact information. Certain practices, currently described as exceptions to prohibited practices, are listed as permissible practices. The rule clarifies that any practice not listed in the rule is prohibited. Throughout the chapter, the amendments change the term "permit holder" to "medication aide" to be consistent and to use a defined term.

The proposed amendments and new section also implement Senate Bill (S.B.) 807 and S.B. 1307, 84th Legislature, Regular Session, 2015, which amended Texas Occupations Code, Chapter 55, Licensing of Military Service Members, Military Veterans, and Military Spouses. The proposed amendments add definitions of terms related to these provisions and the new section addresses several areas that relate to issuing medication aide permits to military service members, military veterans, and military spouses.

Throughout the chapter, grammatical and editorial changes were made for clarity and consistency, and to correct formatting structure.

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

The proposed amendment in §95.101 adds definitions for "active duty," "armed forces of the United States," "military service member," "military spouse," and "military veteran," because those terms are used in proposed new §95.129. The proposed amendment adds definitions for "EMR" (employee misconduct registry) and "NAR" (nurse aide registry) because provisions are added related to those registries. The proposed amendment adds definitions for "HCSSA" (home and community support services agency), "client," "day," and "PRN medication" (pro re nata medication) and amends the definition of "facility" to clarify the meaning of those terms. The proposed amendment uses the acronyms for several terms that are currently defined and puts the terms in alphabetical order based on the acronyms. The proposed amendment also includes editorial and grammatical changes for consistency.

The proposed amendment in §95.103 deletes references to the statutes under which medication aides practice because it duplicates information in §95.101(a), explaining the purpose of the chapter. The proposed amendment clarifies that a medication aide who works in a Medicare skilled nursing facility or a Medicaid nursing facility must also be a nurse aide in accordance with Chapter 94 of Title 40. The proposed amendment also makes minor editorial changes to use terminology that is consistent throughout the chapter.

The proposed amendment in §95.105(a)(3) clarifies that a medication aide may administer regularly prescribed medication if the aide personally sets up the medication from a unit dose pack. Currently, the rule requires an aide to "personally prepare" medication and the amendment clarifies how that requirement applies to dose packs. The proposed amendment moves the requirements that a medication aide must meet to administer previously ordered PRN medication, crush medication, and electronically order refills, from subsection (b)(3), (6), and (9) to subsection (a)(6), (9), and (10). The requirements are more appro-

priately listed in subsection (a), which describes actions that a medication aide may perform, rather than subsection (b), which describes prohibited actions. Similarly, examples of actions that a medication aide may perform in subsection (b)(5)(A) and (B), which are currently provided as exceptions to the prohibition on calculating a dosage, are moved to subsection (a)(7) and (8). In subsection (b)(8), the phrase "physician, dentist, or podiatrist" is replaced with "healthcare professional" because the prohibition on a medication aide receiving or reducing an order to writing applies to an order from any healthcare professional, not just the three professionals identified in the current rule. The proposed amendment states that any practice not listed in §95.105(a) is a prohibited practice for a medication aide. This provision is added to clarify permissible practices of a medication aide. The proposed amendment makes editorial changes for clarity and to correctly format the section.

The proposed amendment in §95.107 adds a new requirement that an applicant must not have been convicted of a criminal offense listed in Texas Health and Safety Code (THSC), §250.006(a) and not have been convicted of a criminal offense listed in §250.006(b) within the preceding five years. The proposed amendment also states that an applicant must not be listed as unemployable on the EMR or listed with a revoked or suspended status on the NAR. These additional requirements are designed to protect the health and safety of persons to whom medication aides administer medication. Additional editorial changes are made for clarity and to correctly format the section.

The proposed amendment in §95.109 changes the time period allowed for an applicant to submit a permit application and other required documentation from 30 days to 20 days after enrollment in a training program. This shorter time period is designed to give DADS adequate time to review a permit applicant and address any deficiencies, which increases the likelihood that an applicant will meet the application requirements before the exam date. The proposed amendment also allows, in addition to cashier's check and money order, payment of fees by methods approved by DADS. This provision allows DADS to authorize other forms of payment in the future without amending the rule. The proposed amendment identifies other sections in Chapter 95 that include fee schedules for correctional medication aides and home health medication aides. This information is included for clarification. The proposed amendment states that DADS verifies the accreditation of the high school that issues a diploma or testing service or program that certifies the general educational development (GED) test. The proposed amendment also states that if DADS is unable to verify the accreditation status of the school, testing service, or program, the applicant must provide documentation to DADS verifying the accreditation status of the school, testing service, or program. Additional editorial changes are made for clarity and to correctly format the section.

The proposed amendment in §95.113 states that DADS denies an application for a permit if the applicant is listed on the NAR in revoked or suspended status; if the applicant has a conviction of a criminal offense listed on THSC §250.006(a), or a conviction of a criminal offense in §250.006(b) within five years before DADS receives the application or if the applicant is listed on the EMR. These changes are consistent with the proposed amendment to §95.107 and are designed to protect the health and safety of persons to whom medication aides administer medication. The proposed amendment makes grammatical and editorial changes for clarity and consistency.

The proposed amendment in §95.115 states that DADS denies renewal of a permit to a medication aide who has a criminal conviction of an offense listed in THSC §250.006(a), or a criminal conviction of an offense listed in THSC §250.006(b) within five years before the date DADS receives the renewal application; is listed as unemployable on the EMR; or is listed with a revoked or suspended status on the NAR. The changes are consistent with the proposed amendments to §95.107 and §95.113 and are designed to protect the health and safety of persons to whom medication aides administer medication. The proposed amendment also states that DADS denies renewal of a permit if the medication aide is in default on a guaranteed student loan as described in Texas Education Code §57.491. This change reflects DADS current practice. The proposed amendment also addresses how DADS determines if an application is late and when DADS denies the late renewal of a permit. The proposed amendment makes grammatical and editorial changes for clarity and consistency.

The proposed amendment in §95.117 specifies that a medication aide must notify DADS within 30 days after changing any contact information, including name, preferred mailing address, and email address.

The proposed amendment in §95.119 adds requirements that a training program must comply with before a student begins the program. These requirements include ensuring the student meets training requirements in §95.107, performing a criminal history check, checking the EMR and NAR, and documenting the program's findings. The proposed amendment allows a pharmacist instructor in a training program to have a minimum of one year of experience as a pharmacist in a correctional facility setting and be employed as a pharmacist in a correctional facility. The rule currently requires the experience to be in a facility, so the proposed amendment also allows pharmacists with experience in a correctional facility to qualify to be training instructors. The proposed amendment allows a continuing education training program to consist of online instruction. This change will allow continuing education to be provided more conveniently and increase access to it. The proposed amendment also changes the time period for a training program to notify DADS that a medication aide has completed a continuing education course from 15 days to 10 days. This change will provide DADS with information about an aide's continuing education status sooner, which allows the medication aide to get appropriate credit for the continuing education program in a more timely manner. The proposed amendment makes editorial and grammatical changes for clarity and consistency.

The proposed amendment in §95.121 contains editorial changes to correct references and the formatting of the section.

The proposed amendment in §95.123 clarifies that DADS may suspend a permit in an emergency or rescind approval for a training program if requirements of Chapter 95 are not met. Additional grammatical and editorial changes are made for clarity and consistency.

The proposed amendment in §95.125 deletes subsection (m) which was used for implementation of the correctional medication aide program. The program is now operating and, therefore, the implementation requirements are no longer needed. Examples of actions that a correctional medication aide may perform in subsection (c)(2)(C)(i) and (ii), which are currently provided as exceptions to the prohibition on calculating a dosage, are moved to subsection (c)(1)(I) and (J). The actions are more appropriately listed in subsection (c)(1), which describes actions

that a correctional medication aide may perform, rather than subsection (c)(2), which describes prohibited actions. Similarly, the amendment moves the requirements that a correctional medication aide must meet to crush medication from subsection (c)(2)(D) to subsection (c)(1)(K). Additional grammatical and editorial changes were made for clarity and consistency and to correct the formatting of the section.

The proposed amendment in §95.127 deletes the term "work-days" and replaces it with "days" throughout the section for consistency. The time periods are also modified to accommodate the change from workdays to days. Additional editorial and grammatical changes are made throughout the section for clarity and consistency.

The proposed amendment in §95.128 moves the examples of actions that a home health medication aide may perform in subsection (d)(5)(A) and (B), which are currently provided as exceptions to the prohibition on calculating a dosage, to subsection (c)(8) and (9). The actions are more appropriately listed in subsection (c), which describes actions that a home health medication aide may perform, rather than subsection (d), which describes prohibited actions. Similarly, the amendment moves the requirements that a home health medication aide must meet to crush medication from subsection (d)(6) to subsection (c)(10). The proposed amendment adds to the list of applicant qualifications that the applicant must not have been convicted of a criminal offense listed in THSC §250.006(a) and not have been convicted of a criminal offense listed in §250.006(b) within the preceding five years. The proposed amendment also states that an applicant must not be listed as unemployable on the EMR or listed with a revoked or suspended status on the NAR. The proposed amendment also states that DADS denies renewal of the permit of a medication aide if the medication aide has been convicted of those offenses, listed as unemployable on the EMR, or listed with a revoked or suspended status on the NAR. These new requirements are designed to protect the health and safety of persons to whom medication aides administer medication. The proposed amendment adds the address to which an applicant sends a request for reimbursement. The proposed amendment also updates references and includes grammatical and editorial changes for clarity and consistency and to correct the formatting structure of the section.

Proposed new §95.129 describes the process that an applicant who is a military service member or a military veteran must follow to request a waiver of the combined permit application and examination fee based on military service, training, or education. The proposed new rule also describes the process that an applicant who is a military service member, a military veteran, or a military spouse, and who holds a permit in good standing in another jurisdiction must follow to request a waiver of the combined permit application and examination fee. In addition, the proposal describes the process that a medication aide who is a military service member must follow to request two additional years to complete permit renewal requirements. Finally, the proposal describes the process that a former medication aide who is a military service member, a military veteran, or a military spouse must follow to request renewal of an expired permit. This section has been added to comply with Texas Occupations Code, Chapter 55, as recently amended by S.B. 807 and S.B. 1307.

#### FISCAL NOTE

David Cook, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments and new section are in effect, enforcing or administering the amendments

and new section does not have foreseeable implications relating to costs or revenues of state or local governments. The new section allows certain fees to be waived, which will decrease revenue to the state, but DADS does not anticipate a large number of fee waivers, so the decrease will likely be minimal.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments and new section will not have an adverse economic effect on small businesses or micro-businesses because the proposed amendments and new section do not impose new requirements on any persons regulated by the rules.

#### PUBLIC BENEFIT AND COSTS

Mary T. Henderson, Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years the amendments and new section are in effect, the public will benefit from rules that prohibit applicants with a history of particular convictions or misconduct from obtaining a medication aide permit. The public will also benefit from having rules that reduce financial and administrative barriers for military service members, military veterans, and military spouses to receive and renew a medication aide permit.

Ms. Henderson anticipates that there will not be an economic cost to persons who are required to comply with the amendments and new section. The amendments and new section will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Laura Bagheri at (512) 438-4836 in DADS Regulatory Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-15R04, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto:rulescomments@dads.state.tx.us). To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 15R04" in the subject line.

#### STATUTORY AUTHORITY

The amendments and new rule are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Health and Safety Code, §142.023, which authorizes the HHSC executive commissioner to establish standards for home health medication aides, and §242.608, which authorizes the HHSC executive commissioner to adopt rules regulating medication aides in nursing facilities; Texas Human Re-

sources Code, §161.083, which authorizes the executive commissioner to establish minimum standards and requirements for the issuance of corrections medication aide permits; and Texas Occupations Code, Chapter 55, which requires a state agency to adopt rules related to licensure of military service members, military veterans, and military spouses.

The amendments and new rule implement Texas Government Code, §531.0055; Texas Health and Safety Code, §142.023 and §242.608; Texas Human Resources Code, §161.083; and Texas Occupations Code, Chapter 55.

§95.101. *Introduction.*

(a) Purpose. The purpose of this chapter is to implement the provisions of the:

(1) Texas Health and Safety Code, Chapter 242, Subchapter N, concerning the administration of medications to facility residents;

(2) Texas Health and Safety Code, Chapter 142, Subchapter B, concerning the administration of medication by a home and community support services agency; and

(3) Texas Human Resource Code, §161.083, concerning the administration of medication to an inmate in a correctional facility.

(b) Corrections medication aide permit requirements. Section 95.125 of this chapter (relating to Requirements for Corrections Medication Aides) applies to a corrections medication aide or an applicant for a corrections medication aide permit.

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

(1) Abuse--The willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish.

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

(3) Armed forces of the United States--The Army, Navy, Air Force, Coast Guard, or Marine Corps of the United States, including reserve units of those military branches.

(4) [(2)] BON--Texas Board of Nursing.

(5) Client--An individual receiving home health, hospice, or personal assistance services from a HCSSA.

(6) [(3)] Correctional facility--A facility operated by or under contract with the Texas Department of Criminal Justice.

(7) [(4)] DADS--Department of Aging and Disability Services.

(8) Day--Any day, including a Saturday, a Sunday, and a holiday.

(9) EMR--Employee misconduct registry. The registry maintained by DADS in accordance with Texas Health and Safety Code, Chapter 253, to record findings of reportable conduct by certain unlicensed employees.

(10) [(5)] Examination--A written competency evaluation for medication aides administered by DADS.

(11) [(6)] Facility--An institution licensed under Texas [the] Health and Safety Code, Chapter 242; a state supported living center as defined in Texas [the] Health and Safety Code, §531.002(19) [§531.002(17)]; a licensed [an] intermediate care facility for an individual [persons] with an intellectual disability or related condition as defined in the Texas Health and Safety Code Chapter 252; an intermediate care facility for an individual with an intellectual disability or related condition operated by a community center as described in Texas [established under] Health and Safety Code, Chapter 534; or an assisted living facility licensed under Texas [the] Health and Safety Code, Chapter 247.

(12) HCSSA--A home and community support services agency licensed under Texas Health and Safety Code Chapter 142, and Chapter 97 of this title.

(13) [(7)] Licensed nurse--A licensed vocational nurse or an RN [a licensed registered nurse].

(14) [(8)] LVN--Licensed vocational nurse.[--]A person licensed by the BON, or who holds a license from another state recognized by the BON, to practice vocational nursing in Texas.

(15) [(9)] Medication aide--A person who is issued a permit by DADS under Texas Health and Safety Code Chapter 242, Subchapter N, Texas Human Resources Code, Chapter 161, Subchapter D, and Texas Health and Safety Code, Chapter 142, Subchapter B [permitted by DADS] to administer medications to facility residents, correctional facility inmates, or to persons served by home and community support services agencies.

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

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

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

(20) NAR--Nurse aide registry. A state listing of nurse aides maintained by DADS in accordance with Texas Health and Safety Code, Chapter 250 that indicates if a nurse aide has active status, revoked status, or is unemployable based on a finding of having committed an act of abuse, neglect or misappropriation of resident property.

(19) [(10)] Misappropriation of resident property--The deliberate misplacement, exploitation, or wrongful temporary or permanent use of a resident's belongings or money without the resident's consent.

(21) [(11)] Neglect--The failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.

(22) [(12)] Non-licensed direct care staff--Employees of facilities other than Medicare-skilled nursing facilities or Medicaid nursing facilities who are primarily involved in the delivery of services to assist with residents' activities of daily living or active treatment programs.

(23) [(13)] Nurse aide--An individual who has completed a nurse aide training and competency evaluation program (NATCEP) approved by DADS [the state] as meeting the requirements of 42 Code of Federal Regulations (CFR), §§483.15 - 483.154, or has been determined competent as provided in 42 CFR, §483.150(a) and (b), and is listed as certified on DADS nurse aide registry.

(24) PRN medication--Pro re nata medication. Medication administered as the occasion arises or as needed.

~~[(14) Registered nurse (RN)--A person licensed by the BON, or who holds a license from another state recognized by the BON, to practice professional nursing in Texas.]~~

~~(25) [(45)] Registered pharmacist--An individual currently licensed by the Texas Board of Pharmacy to practice pharmacy.~~

~~(26) RN--Registered nurse. A person who is licensed by the BON, or who holds a license from another state recognized by the BON, to practice professional nursing in Texas.~~

~~(27) [(46)] TDCJ--Texas Department of Criminal Justice.~~

~~(28) [(47)] Training program--A program approved by DADS to instruct individuals to act as medication aides.~~

*§95.103. Requirements for Administering Medications.*

(a) General. A person may not administer medication to a resident in a facility or a correctional facility unless the person:

(1) holds a current license under state law which authorizes the licensee to administer medication; or

(2) if administering medication in a facility, holds a current permit issued under Texas Health and Safety Code, Chapter 242, Subchapter N, or if administering medication in a correctional facility, holds a current permit issued under Texas Human Resources Code, §161.083 or Texas Health and Safety Code, Chapter 242, Subchapter N and acts under the authority of a person who holds a current license under state law which authorizes the licensee to administer medication.

(b) Supervision and applicable law and rules. A medication aide [permit holder] must function under the direct supervision of a licensed nurse on duty or on call by the facility or correctional facility using the medication aide [permit holder]. A medication aide [permit holder] must:

(1) function in accordance with applicable law and rules relating to administration of medication and operation of a facility or a correctional facility; and

(2) comply with DADS rules applicable to personnel used in a facility or TDCJ rules applicable to personnel in a correctional facility.

(c) Governmental employees. Governmental employees may receive a permit to administer medications under this chapter as authorized by Texas Health and Safety Code, §242.610(f) or Texas Human Resources Code, §161.083:

(1) State supported living center employees and employees of an intermediate care facility for persons with an intellectual disability operated by a community center established under Texas Health and Safety Code, Chapter 534 must comply with subsection (b) of this section and §§95.105, 95.107, 95.109, 95.111, 95.113, 95.115, 95.117, 95.119, 95.121, and 95.123 of this chapter (relating to Allowable and Prohibited Practices of a Medication Aide [Permit Holder]; Training Requirements; Nursing Graduates; Reciprocity; Application Procedures; Examination; Determination of Eligibility; Permit Renewal; Changes; Training Program Requirements; Permitting of Persons with Criminal Backgrounds; and Violations, Complaints, and Disciplinary Actions).

(2) Correctional facility employees and employees of medical services contractors for a correctional facility who administer medication as medication aides must comply with §95.125 of this chapter (relating to Requirements for Corrections Medication Aides).

(d) Medication aides in nursing facilities. Persons employed as medication aides in a Medicare skilled nursing facility or a Medicaid nursing facility must comply with the requirements relating to

nurse aides as set forth in United States Code, Part 42, §1396r(b)(5) [the Omnibus Budget Reconciliation Act of 1987, Public Law 100-203, §4201-4214, December 22, 1987, as amended,] and Chapter 94 of this title (relating to Nurse Aides).

(e) Exemptions.

(1) A person may administer medication to a resident in a facility without the license or permit as required in subsection (a) of this section, if the person is:

(A) a graduate nurse holding a temporary permit issued by the BON;

(B) a student enrolled in an accredited school of nursing or program for the education of registered nurses who is administering medications as part of the student's clinical experience;

(C) a graduate vocational nurse holding a temporary permit issued by the BON;

(D) a student enrolled in an accredited school of vocational nursing or program for the education of vocational nurses who is administering medications as part of the student's clinical experience; or

(E) a trainee in a medication aide training program approved by DADS under this chapter who is administering medications as part of the trainee's clinical experience.

(2) A student described in paragraph (1)(B), (D), or (E) of this subsection may administer medication only as part of the student's clinical experience.

(3) A person described in paragraph (1) of this subsection must act under the supervision of an individual as set forth in applicable law and rules.

*§95.105. Allowable and Prohibited Practices of a Medication Aide [Permit Holder].*

(a) A medication aide [permit holder] under Texas Health and Safety Code, Chapter 242, Subchapter N, may:

(1) observe and report to the facility's charge licensed nurse reactions and side effects to medication shown by a resident;

(2) take and record vital signs before [prior to] the administration of medication that [which] could affect or change the vital signs;

(3) administer regularly prescribed medication to a resident if the medication aide: [which the permit holder has been trained to administer only after personally preparing (setting up) the medication to be administered. The medication aide must document the administered medication in the resident's clinical record;]

(A) is trained to administer the medication;

(B) personally prepares the medication or sets up the medication to be administered from a unit dose pack; and

(C) documents the administration of the medication in the resident's clinical record;

(4) administer oxygen per nasal canula or a non-sealing mask only in an emergency, [- Immediately] after which [the emergency,] the medication aide [permit holder] must verbally notify the licensed nurse on duty or on call and appropriately document the action and notification; [and]

(5) apply specifically ordered ophthalmic, otic, nasal, vaginal, and rectal medication; [-]

(6) administer previously ordered PRN medication, if:

(A) the facility's licensed nurse on duty or on call authorizes the medication;

(B) the medication aide documents in the resident's records the symptoms indicating the need for the medication and the time the symptoms occurred;

(C) the medication aide documents in the resident's records that the facility's licensed nurse was contacted, symptoms were described, and the licensed nurse granted permission to administer the medication, including the time of contact;

(D) the medication aide obtains authorization to administer the medication from the facility's licensed nurse on duty or on call each time the symptoms occur; and

(E) the medication aide ensures that the resident's record is co-signed by the licensed nurse who gave authorization by the end of the nurse's shift or, if the nurse was on call, by the end of the nurse's next shift;

(7) measure a prescribed amount of a liquid medication to be administered to a resident;

(8) break a tablet to be administered to a resident, if:

(A) the resident's medication card or its equivalent accurately documents how the tablet must be broken before administration; and

(B) the licensed nurse on duty or on call has calculated the dosage;

(9) crush medication, if the medication aide:

(A) obtains authorization to crush the medication from the licensed nurse on duty or on call; and

(B) documents the authorization on the resident's medication card or its equivalent; and

(10) electronically order a refill of medication from a pharmacy, if the refill request is signed by the licensed nurse on duty or on call.

(b) A medication aide [permit holder] under Texas Health and Safety Code, Chapter 242, Subchapter N, may not:

(1) administer medication by the injection route including:

(A) intramuscular route;

(B) intravenous route;

(C) subcutaneous route;

(D) intradermal route; and

(E) hypodermoclysis route;

(2) administer medication used for intermittent positive pressure breathing [(IPPB)] treatments or any form of medication inhalation treatments;

(3) administer previously ordered PRN [pɹø rə nata (PRN)] medication, except in accordance with subsection (a)(6) of this section; [unless authorization is obtained from the facility's licensed nurse on duty or on call. If authorization is obtained, permit holders must:]

[(A) document, in the resident's records, symptoms indicating the need for the medication and the time the symptoms occurred;]

[(B) document in the resident's records that the facility's licensed nurse was contacted, symptoms were described, and permis-

sion was granted to administer the medication, including the time of contact;]

[(C) obtain permission to administer the medication each time the symptoms occur in the resident; and]

[(D) ensure that the resident's record is co-signed by the licensed nurse who gave permission by the end of the nurse's shift, or if the nurse was on call, by the end of the nurse's next tour of duty;]

(4) administer [the initial dose of a] medication that, according to the resident's clinical records, has not been previously administered to the [a] resident[-. Whether a medication has been previously administered must be determined by the resident's current clinical records];

(5) calculate a resident's medication doses for administration;[-, except that the permit holder may:]

[(A) measure a prescribed amount of a liquid medication to be administered; and]

[(B) break a tablet for administration to a resident, provided the licensed nurse on duty or on call has calculated the dosage. The resident's medication card or its equivalent must accurately document how the tablet must be altered prior to administration;]

(6) crush medication, except in accordance with subsection (a)(9) of this section [unless authorization is obtained from the licensed nurse on duty or on call. The authorization to crush the specific medication must be documented on the resident's medication card or its equivalent];

(7) administer medications or feedings by way of a tube inserted in a cavity of the body;

(8) receive or assume responsibility for reducing to writing a verbal or telephone order from a healthcare professional [physician, dentist, or podiatrist];

(9) order a resident's medications from a pharmacy, except in accordance with subsection (a)(10) of this section;

(10) apply topical medications that involve the treatment of skin that is broken or blistered or when a specified aseptic technique is ordered by the attending physician;

(11) steal, divert, or otherwise misuse medication;

(12) violate any provision of the Texas Health and Safety Code or this chapter;

(13) fraudulently procure or attempt to procure a permit;

(14) neglect to administer appropriate medications, as prescribed, in a responsible manner; or

(15) administer medications if the person is unable to do so with reasonable skill and safety to residents by reason of drunkenness or [and/or] excessive use of drugs, narcotics, chemicals, or any other type of material.

(c) If a practice is not described in subsection (a) of this section the practice is prohibited for a medication aide under Texas Health and Safety Code, Chapter 242, Subchapter N.

§95.107. Training Requirements; Nursing Graduates; Reciprocity.

(a) Each applicant for a permit issued under Texas Health and Safety Code, Chapter 242, Subchapter N, must complete a training program unless the applicant meets the requirements of subsection (c) or (e) [(e) or (d)] of this section.

(b) Before submitting an [Prior to] application for a permit under Texas Health and Safety Code, Chapter 242, Subchapter N, an applicant must:

- (1) be able to read, write, speak, and understand English;
- (2) be at least 18 years of age;
- (3) be free of communicable diseases and in suitable physical and emotional health to safely administer medications;
- (4) be a graduate of an accredited [a] high school or have proof of successfully passing a general educational development test [equivalency diploma];
- (5) be [currently] employed in a facility as a nurse aide or nonlicensed direct care staff person on the first official day of an applicant's medication aide training program; and

(6) have been employed: [in a facility for 90 days as a nonlicensed direct care staff person. This employment must have been completed within the 12-month period preceding the first official day of the applicant's medication aide training program. An applicant employed as a nurse aide in a Medicare-skilled nursing facility or a Medicaid nursing facility is exempt from the 90-day requirement.]

(A) as a nurse aide in a Medicare-skilled nursing facility or a Medicaid nursing facility; or

(B) in a facility for 90 days as a nonlicensed direct care staff person during the 12-month period before the first official day of the applicant's medication aide training program;

(7) not have been convicted of a criminal offense listed in Texas Health and Safety Code, §250.006(a), and not have been convicted of a criminal offense listed in Texas Health and Safety Code, §250.006(b) within five years before the date DADS receives the permit application;

(8) not be listed as unemployable on the EMR; and

(9) not be listed with a revoked or suspended status on the NAR.

(c) A person who is attending or has attended an accredited school of nursing and who does not hold a license to practice professional or vocational nursing meets the training requirement for issuance of a permit under Texas Health and Safety Code, Chapter 242, Subchapter N, if the person:

(1) attended the nursing school no earlier than January 1 of the year immediately preceding the year of application for a permit under this chapter;

(2) successfully completed courses at the nursing school that cover DADS curriculum for a medication aide training program;

(3) submits a statement, with the application for a permit and combined permit application and examination fee as provided in §95.109 of this chapter (relating to Application Procedures), on the form provided by DADS, [that is] signed by the nursing school's administrator or other authorized individual, certifying [and certifies] that the person completed the courses specified in paragraph (2) of this subsection[: The administrator is responsible for determining that the courses he certifies cover DADS curriculum. The statement must be submitted with the person's application for a permit and permit application fee as provided in §95.109 of this chapter (relating to Application Procedures)]; and

(4) complies with subsection (e)(5) [(d)(5)] and (6) of this section.

(d) The administrator or other authorized individual referred to in subsection (c)(3) of this section is responsible for determining that the nursing school courses cover DADS curriculum.

(e) [(d)] A person who is a graduate of an accredited school of nursing and who does not hold a license to practice professional or vocational nursing meets the training requirement for issuance of a permit under Texas Health and Safety Code, Chapter 242, Subchapter N, provided the date of graduation from the nursing school was no earlier than January 1 of the year immediately preceding the year of application for a permit under this chapter.

(1) The graduate must submit an official application form to DADS. The applicant must meet the requirements of subsection (b)(1) - (4) and (7) - (8) of this section.

(2) The application must be accompanied by the combined permit application and examination fee as set out in §95.109(c) of this chapter.

(3) The applicant must include an official transcript documenting graduation from an accredited school of nursing.

(4) DADS acknowledges receipt of the application by sending the applicant a copy of this chapter and DADS open book examination.

(5) The applicant must complete the open book examination and return it to DADS by the date given in the examination notice.

(6) The applicant must complete DADS written examination. DADS denies the application of an applicant failing to schedule and take the examination by the date given in the examination notice.

(7) An open-book or written examination may not be retaken if the applicant fails.

(8) Upon successful completion of the two examinations, DADS evaluates all application documents submitted by the applicant.

(9) DADS notifies the applicant in writing of the examination results.

(f) [(e)] A person who holds a valid license, registration, certificate, or permit as a medication aide issued by another state whose minimum standards or requirements are substantially equivalent to or exceed the requirements of Texas Health and Safety Code, Chapter 242, Subchapter N, in effect at the time of application, may request a waiver of the training program requirement as follows:

(1) The applicant must submit an official application form to DADS. The applicant must meet the requirements of subsection (b)(1) - (4) and (7) - (8) of this section.

(2) The application must be accompanied by the combined permit application and examination fee required in §95.109(c) of this chapter.

(3) The application must include a current copy of the rules of the other state governing its licensing and regulation of medication aides, a copy of the legal authority (law, act, code, or other) for the state's licensing program, and a certified copy of the license or certificate for which the reciprocal permit is requested.

(4) DADS acknowledges receipt of the application by sending the applicant a copy of this chapter and DADS open book examination.

(5) DADS may contact the issuing agency to verify the applicant's status with the agency.

(6) The applicant must complete DADS open-book examination and return it to DADS by the date given in the examination notice.

(7) The applicant must complete DADS written examination. The site of the examination is determined by DADS. DADS denies the application of an applicant failing to schedule and take the examination by the date given in the examination notice.

(8) An open-book or written examination may not be retaken if the applicant fails.

(9) Upon successful completion of the two examinations, DADS evaluates all application documents submitted by the applicant.

(10) DADS notifies the applicant in writing of the examination results.

#### *§95.109. Application Procedures.*

(a) An applicant for a permit under Texas Health and Safety Code, Chapter 242, Subchapter N, who complies with §95.107(a) of this chapter (relating to Training Requirements; Nursing Graduates; Reciprocity) must submit to DADS, no later than 20 [30] days after enrollment in a training program, an application, including all required information and documentation on DADS forms.

(b) DADS considers an application under subsection (a) of this section as officially submitted when DADS receives the permit application and examination fee.

(c) An applicant must pay the combined permit and examination [Payment of] fees [must be] by cashier's check or money order made payable to the Department of Aging and Disability Services, or by other DADS-approved payment methods. All fees are nonrefundable, except as provided by Texas Government Code, Chapter 2005.

(1) The fee schedule is as follows:

(A) combined permit application and examination fee--\$25;

(B) renewal fee--\$15;

(C) late renewal fees for permit renewals made after the permit expires:

(i) \$22.50 for an expired permit renewed from one to 90 days after expiration;

(ii) \$30 for an expired permit renewed from 91 days to one year after expiration;

(iii) \$30 for a former medication aide [permit holder] who meets the criteria in §95.115(c)(5) of this chapter (relating to Permit Renewal); and

(D) permit replacement fee--\$5.

(2) An initial or a renewal application is considered incomplete until the fee has been received and cleared through the appropriate financial institution.

(3) The fee schedule that applies to the correctional medication aide is in §95.125 of this chapter (relating to Requirements for Corrections Medication Aides), and the fee schedule that applies to the home health medication aide is in §95.128 of this chapter (relating to Home Health Medication Aides).

(d) An applicant [All applicants] must submit the following application materials:[-]

(1) the [The] general statement enrollment form, which must contain:

(A) specific information regarding personal data, certain misdemeanor and felony convictions, work experience, education, and training;

(B) a statement that all the requirements in §95.107(b) of this chapter were met before [prior to] the start of the program;

(C) a statement that the applicant understands that application fees submitted in the permit process are nonrefundable;

(D) a statement that the applicant understands materials submitted in the application process are nonreturnable;

(E) a statement that the applicant understands that it is a misdemeanor to falsify any information submitted to DADS; and

(F) the applicant's signature, which has been dated and notarized; and[-]

(2) a [A] certified copy or a notarized photocopy of an unaltered, original, high school diploma or transcript [~~which has been notarized as a true and exact copy of an unaltered original of the applicant's high school graduation diploma or transcript~~] or the written results of a general educational development (GED) test demonstrating that the applicant passed the GED test [equivalency diploma], unless the applicant is applying under §95.107(e) [~~§95.107(d)~~] of this chapter.

(e) DADS verifies the accreditation of the high school that issued the diploma or transcript, or the testing service or program that certified the GED test required by subsection (d)(2) of this section. If DADS is unable to verify the accreditation status of the school, testing service, or program, and DADS requests additional documentation from the applicant to verify the accreditation status, the applicant must provide the documentation to DADS.

(f) [~~(e)~~] DADS sends a notice listing the additional materials required to an applicant who does not submit a complete [the] application. An applicant must submit a complete application by the date of DADS final exam. [An application not completed by the day of the medication aide final exam must be voided.]

(g) [~~(f)~~] DADS sends notice of DADS application approval [acceptance or ineligibility, disapproval,] or deficiency to an applicant in accordance with §95.127 of this chapter (relating to Application Processing).

#### *§95.113. Determination of Eligibility.*

(a) DADS approves or denies each application for a permit.

(b) Notices of application approval, denial, or deficiency must be in accordance with §95.127 of this chapter (relating to Application Processing).

(c) DADS denies an application for a permit if the person [has]:

(1) does not meet [met] the requirements in §95.107 of this chapter (relating to Training Requirements; Nursing Graduates; Reciprocity), or §95.125 of this chapter (relating to Requirements for Corrections Medication Aides);

(2) fails [failed] to pass the examination prescribed by DADS, as referenced in §95.111 of this chapter (relating to Examination), or developed by TDCJ, as referenced in §95.125(g) of this chapter;

(3) fails [failed to] or refuses [refused] to properly complete or deliberately submit an [any] application form or fee, or submits [presented] false information on any form or document required by DADS;

(4) ~~violates [violated] or conspires [conspired]~~ to violate the Texas Health and Safety Code, Chapter 242, Subchapter N, Texas Human Resources Code, §161.083, or any provision of this chapter; ~~[or]~~

(5) ~~has a felony or misdemeanor conviction of a [been convicted of a felony or misdemeanor if the] crime that~~ directly relates to the duties and responsibilities of a medication aide [permit holder] as described ~~[set out]~~ in §95.121 of this chapter (relating to Permitting of Persons with Criminal Backgrounds);~~[-]~~

(6) is listed with a revoked or suspended status on the DADS NAR;

(7) has a conviction of a criminal offense listed in Texas Health and Safety Code §250.006(a), or has a conviction of a criminal offense listed in Texas Health and Safety Code §250.006(b) within five years before the date DADS receives the permit application; or

(8) is listed as unemployable on the EMR.

(d) If, after review, DADS determines that the application should be ~~denied [not be approved]~~, DADS gives the applicant written notice of the reason for the proposed decision and of the opportunity for a formal hearing in accordance with §95.123(c)(3) of this chapter (relating to Violations, Complaints, and Disciplinary Actions).

#### §95.115. Permit Renewal.

##### (a) General.

(1) When issued, an initial permit is valid for 12 months from the date of issue.

(2) A medication aide [permit holder] must renew the permit annually.

(3) Each medication aide [permit holder] is responsible for renewing the permit before the expiration date. Failure to receive notification from DADS before [prior to] the expiration date of the permit does not excuse the medication aide's [permit holder's] failure to file for timely renewal.

(4) A medication aide [permit holder] must complete a seven hour [seven-clock-hour] continuing education program approved by DADS before [prior to] expiration of the permit in order to renew the permit. Continuing education hours are not required for the first renewal. After a permit is renewed for the first time, the medication aide [permit holder] must earn approved continuing education hours to have the permit renewed again.

(5) DADS denies renewal of the permit of a medication aide [permit holder] who: [is in violation of Health and Safety Code, Chapter 242, Subchapter N, Human Resources Code, §161.083, or this chapter at the time of application for renewal.]

(A) is in violation of Texas Health and Safety Code, Chapter 242, Subchapter N, Texas Human Resources Code, §161.083, or this chapter at the time of application for renewal;

(B) has a conviction of a criminal offense listed in Texas Health and Safety Code §250.006(a), or a conviction of a criminal offense listed in Texas Health and Safety Code §250.006(b) within five years before the date DADS receives the renewal application;

(C) is listed as unemployable on the EMR;

(D) is listed with a revoked or suspended status on the NAR; or

(E) is in default on a guaranteed student loan as described in Texas Education Code, §57.491.

(6) A person whose permit has expired may not engage in activities that require a permit until the permit has been renewed.

##### (b) Permit renewal procedures.

(1) After receiving proof of the successful completion of the seven hour [seven-clock-hour] continuing education requirement, DADS sends ~~[to the permit holder, at the address listed in DADS records;]~~ notice of the expiration date of the permit, ~~[and]~~ the amount of the renewal fee due, and a renewal form to the medication aide physical or email address listed in DADS records ~~[that the permit holder must complete and return with the required renewal fee. If DADS does not receive proof of the successful completion of the continuing education requirement, DADS sends the permit holder a reminder notice about the required continuing education hours].~~

(2) The renewal form, which includes the contact information and preferred mailing address of the medication aide [permit holder] and information on certain misdemeanor and felony convictions~~[- It]~~ must be completed and signed by the medication aide and returned to DADS with the required renewal fee [permit holder].

(3) DADS issues a renewal permit to a medication aide [permit holder] who meets [has met] all requirements for renewal, including payment of the renewal fee.

~~[(4) A person who is otherwise eligible to renew a permit may renew an unexpired permit by paying the required renewal fee to DADS before the expiration date of the permit.]~~

##### (c) Late renewal procedures.

(1) If a medication aide submits a renewal application to DADS that is late or incomplete, DADS assesses the appropriate late fee described in §95.109(c)(1)(C) of this chapter (relating to Application Procedures). DADS uses the postmark date to determine if a renewal application is late. If there is no postmark or the postmark is not legible, DADS uses the date the renewal application was received and recorded by the DADS Medication Aide Program to determine if the renewal application is late.

(2) ~~[(+)]~~ A person whose permit has been expired for less than one year may renew the permit by submitting to DADS:

(A) the permit renewal form;

(B) all accrued renewal fees;

(C) proof of having earned, during the expired period, seven hours in an approved continuing education program for each year, or part of a year, since the permit expired; and

(D) proof of having earned, before [prior to] expiration of the permit, seven hours in an approved continuing education program as required by [in] subsection (a)(4) of this section.

(3) ~~[(2)]~~ A person whose permit has been expired for 90 days or less must pay DADS the late renewal fee stated in §95.109(c)(1)(C)(i) of this chapter (relating to Application Procedures) or §95.125(f)(3)(A) of this chapter (relating to Requirements for Corrections Medication Aides).

(4) ~~[(3)]~~ A person whose permit has been expired for more than 90 days but less than one year must pay DADS the late renewal fee stated in §95.109(c)(1)(C)(ii) or §95.125(f)(3)(B) of this chapter.

~~[(4) A person whose permit has been expired for one year or more may not renew the permit. The person may obtain a new permit by complying with the requirements and procedures, including the examination requirements, for obtaining an original permit.]~~

(5) A person who previously held a permit in Texas issued under Texas Health and Safety Code, Chapter 242, Subchapter N, may obtain a new permit without reexamination if the person holds a facility medication aide permit from another state, practiced in that state for at least the two years preceding the application date, and pays to DADS the late renewal fee stated in §95.109(c)(1)(C)(iii) of this chapter.

(6) DADS denies late renewal of the permit if a permit holder:

(A) is in violation of Texas Health and Safety Code, Chapter 242, Subchapter N, Texas Human Resources Code, §161.083, or this chapter on the date DADS receives the application for late renewal;

(B) has a conviction of a criminal offense listed in Texas Health and Safety Code §250.006(a), or a conviction of a criminal offense listed in Texas Health and Safety Code §250.006(b) within five years before the date DADS receives the application for late renewal;

(C) is listed as unemployable on the EMR; or

(D) is listed with a revoked or suspended status on the NAR; or

(E) is in default on a guaranteed student loan as described in Texas Education Code, §57.491.

(d) A person whose permit has been expired for one year or more may not renew the permit. To obtain a new permit, the person must apply for a permit in accordance with §95.109 of this chapter (relating to Application Procedures) and in §95.111 of this chapter (relating to Examination).

*§95.117. Changes.*

(a) A medication aide [permit holder] must notify DADS within 30 days after changing the medication aide's required contact information, including name, preferred mailing address, or email [his or her] address [or name].

(b) DADS replaces a lost, damaged, or destroyed permit upon receipt of a completed duplicate permit request form and permit replacement fee as set out in §95.109(c) of this chapter (relating to Application Procedures) and §95.125(f) of this chapter (relating to Requirements for Corrections Medication Aides).

*§95.119. Training Program Requirements.*

(a) Application. An educational institution accredited by the Texas Workforce Commission or Texas Higher Education Coordinating Board that desires to offer a training program must file an application for approval on a DADS form. Programs sponsored by state agencies for the training and preparation of their own employees are exempt from the accreditation requirement. An approved institution may offer the training program and a continuing education program.

(1) All signatures on DADS forms and supporting documentation must be originals.

(2) The application must include:

(A) the anticipated dates of the program;

(B) the location(s) of the classroom course(s);

(C) the name of the coordinator of the program;

(D) a list that includes the address and telephone number of each instructor [instructors] and any other persons responsible for the conduct of the program[-]. The list must include addresses and telephone numbers for each instructor; and

(E) an outline of the program content and curriculum if the curriculum covers more than DADS established curricula.

(3) DADS may conduct an inspection of the classroom site.

(4) DADS sends notice of approval or proposed denial of the application to the program within 30 days after receiving [of the receipt of] a complete application. If DADS proposes to deny the application due to noncompliance with the requirements of Texas Health and Safety Code, Chapter 242, Subchapter N, or this chapter, the reasons for denial are given in the notice.

(5) An applicant may request in writing a hearing on a proposed denial. The applicant must submit a request within 15 [10] days after the applicant receives [of receipt of the] notice of the proposed denial. The hearing is governed by Texas Administrative Code, Title 1, [conducted in accordance with 1 TAC] Chapter 357, Subchapter I (relating to Hearings under the Administrative Procedure Act);[;] Chapter 91 of this title (relating to Hearings under the Administrative Procedure Act);[;] and Texas Government Code, Chapter 2001. If no request is made, the applicant has waived the opportunity for a hearing, and the proposed action may be taken.

(b) Basic training program.

(1) A training [The] program must include[; but is not limited to,] the following instruction and training:

(A) procedures for preparation and administration of medications;

(B) responsibility, control, accountability, storage, and safeguarding of medications;

(C) use of reference material;

(D) documentation of medications in resident's clinical records, including PRN [prø re nata (PRN)] medications;

(E) minimum licensing standards for facilities covering pharmaceutical service, nursing service, and clinical records;

(F) federal and state certification standards for participation under Title XVIII (Medicare) and Title XIX (Medicaid) of the Social Security Act pertaining to pharmaceutical service, nursing service, and clinical records;

(G) lines of authority in the facility, including facility personnel who are immediate supervisors;

(H) responsibilities and liabilities associated with the administration and safeguarding of medications;

(I) allowable and prohibited practices of medication aides [permit holders] in the administration of medication;

(J) drug reactions and side effects of medications commonly administered to facility residents; and

(K) rules covering the medication aide program.

(2) The program must consist of 140 hours in the following sequence: 100 hours of classroom instruction and training;[;] 20 hours of return skills demonstration laboratory;[;] 10 hours of clinical experience, including clinical observation and skills demonstration under the direct supervision of a licensed nurse in a facility;[;] and 10 [more] hours of [in the] return skills demonstration laboratory. A classroom or laboratory hour must include 50 [eløek] minutes of actual classroom or laboratory time.

(A) Class time must not exceed:

(i) four hours in a 24-hour period for a facility training program; or

(ii) eight hours in a 24-hour period for a correctional facility training program.

(B) The completion date of the program must be:

(i) a minimum of 60 days and a maximum of 180 days ~~after~~ ~~from~~ the starting date of the facility training program; or

(ii) a minimum of 30 days and a maximum of 180 days ~~after~~ ~~from~~ the starting date of a correctional facility training program.

(3) Each program must follow the curricula established by DADS.

(4) Before a student begins a training program, the program must:

(A) ensure the student meets training requirements in §95.107(b)(1) - (9) of this chapter (relating to Training Requirements; Nursing Graduates; Reciprocity);

(B) perform a criminal history check with the Texas Department of Public Safety to verify that the student does not have a conviction of a criminal offense listed in Texas Health and Safety Code, §250.006(a), or a conviction of a criminal offense listed in Texas Health and Safety Code, §250.006(b) within five years before the date the student begins the training program;

(C) check the EMR to verify that the student is not listed as unemployable;

(D) check the NAR to verify if the student is listed in revoked or suspended status; and

(E) document the findings of the criminal history check and employability check in its records.

(5) [(4)] At least seven days before ~~prior to~~ the beginning of a training ~~each~~ program, the coordinator must notify DADS in writing of the dates and daily hours of the program, and the projected number of students.

(6) [(5)] A change in any information presented by the program in an approved application, including ~~;~~ ~~but not limited to;~~ location, instructors ~~[instructorship]~~, and content must be approved by DADS before ~~prior to~~ the change is implemented ~~[program's effective date of the change]~~.

(7) [(6)] The program instructors of the classroom hours must be a registered nurse and registered pharmacist.

(A) The nurse instructor must have:

(i) a minimum of two years of experience in caring for individuals in a long-term care setting or be an instructor in a school of nursing, for a facility training program; or

(ii) a minimum of two years of experience employed in a correctional setting or be an instructor in a school of nursing, for a correctional facility program.

(B) The pharmacist instructor must have: ~~[a minimum of one year of experience and be currently employed as a consultant pharmacist in a facility.]~~

(i) a minimum of one year of experience and be currently employed as a consultant pharmacist in a facility; or

(ii) a minimum of one year of experience employed as a pharmacist in a correctional setting.

(8) [(7)] The program coordinator must provide clearly defined and written policies regarding each student's clinical experience

to the student, the administrator, and the director of nursing in the facility used for the clinical experience.

(A) The clinical experience must be counted only when the student is performing functions involving medication administration and under the ~~direct~~ ~~contact~~ supervision of a licensed nurse.

(B) The program coordinator must be responsible for final evaluation of the student's clinical experience.

(9) [(8)] Each program must issue to each student, upon successful completion of the program, a certificate of completion, which must include the program's name, the student's name, the date of completion, and the signature of the program coordinator or administrative official.

(10) [(9)] Each program must inform DADS on the DADS class roster form of the final grade results for each student within 15 days after the student's completion of the course.

(c) Continuing education training program.

(1) The program must consist of at least seven ~~eleek~~ hours of classroom or online instruction.

(2) The instructors must meet the requirements in subsection (b)(7) ~~[(b)(6)]~~ of this section.

(3) Each program must follow the curricula established by DADS or the curriculum established by TDCJ for corrections medication aides, as applicable.

(4) Within 10 ~~[15]~~ days after a medication aide's completion of the course, each program must inform DADS on the DADS class roster form of the name of each medication aide ~~[permit holder]~~ who has completed the course.

~~[(d) TDCJ must file with DADS an application for approval for a training program and curriculum for corrections medication aides that complies with Government Code, §501.1485 (relating to Corrections Medication Aides).]~~

(d) [(e)] In developing a training program for corrections medication aides ~~that complies with Texas Government Code §501.1485~~, TDCJ may modify, as appropriate, the content of the training program curriculum originally developed under Texas Health and Safety Code, Chapter 242, to produce content suitable for administering medication in a correctional facility. The training program curriculum must be approved by DADS.

(e) Subsection (c) of this section applies to a training program for medication aides and correction medication aides.

~~[(f) Subsection (e) of this section applies to a training program developed by the TDCJ.]~~

§95.121. *Permitting of Persons with Criminal Backgrounds.*

(a) DADS may suspend or revoke an existing permit, deny ~~[disqualify a person from receiving]~~ a permit, or deny ~~[to]~~ a person the opportunity to take the examination ~~[be examined]~~ for a permit if a person has been convicted ~~[because of a person's conviction]~~ of a felony or misdemeanor offense that ~~[if]~~ the crime directly relates to the duties and responsibilities of a medication aide.

(b) [(4)] When ~~[is]~~ considering whether a criminal conviction directly relates to the duties and responsibilities ~~[occupation]~~ of a medication aide, DADS considers:

(1) [(A)] the nature and seriousness of the offense ~~[crime]~~;

(2) [(B)] that the following offenses may reflect [the relationship of the crime to the purposes for requiring a permit to be a medication aide. The following felonies and misdemeanors relate to the permit of a medication aide because these criminal offenses indicate] an actual or potential inability [or a tendency to be unable] to perform as a medication aide:

(A) [(+)] the misdemeanor of knowingly or intentionally acting as a medication aide without a permit issued under the Texas Health and Safety Code, Chapter 242;

(B) [(+)] any conviction for an offense listed in §250.006 of the Texas Health and Safety Code;

(C) [(+)] any conviction, other than a Class C Misdemeanor, for an offense defined under Texas Penal Code, Chapter 22, as assault; sexual assault; intentional exposure of another to AIDS or HIV; aggravated assault or sexual assault; injury to a child, elderly person, or person with disabilities; or aiding suicide;

(D) [(+)] any conviction, except Class C Misdemeanors, with a final disposition within the last ten years, for an offense defined in the Texas Penal Code as burglary under Chapter 30; theft under §31.03; sale or display of harmful material to minors; sexual performance by a child; and possession or promotion of child pornography;

(E) [(+)] any conviction for an offense defined in the Texas Penal Code as an attempt, solicitation, conspiracy, or organized criminal activity for any offense listed in subparagraphs (B) - (D) of this paragraph [clauses (ii) - (iv) of this subparagraph]; and [and/or]

(F) [(+)] any conviction under United States statutes or jurisdiction other than Texas for any offense equivalent to those listed in subparagraphs (B) - (E) of this paragraph [clauses (ii) - (v) of this subparagraph];

(3) [(C)] the extent to which a permit might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; [and]

(4) [(D)] the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a medication aide; and[- In determining the present fitness of a person, DADS considers the evidence described in the Occupations Code, §53.023.]

(5) other factors related to the fitness of a person to perform the duties and discharge the responsibilities of a medication aide, as described in Texas Occupations Code §53.023.

(c) [(2)] DADS gives written notice to the person that DADS proposes to deny the application or suspend or revoke the permit after a hearing, in accordance with the provisions of §95.123(c)(3) of this chapter [title] (relating to Violations, Complaints, and Disciplinary Actions). If DADS denies, suspends, or revokes an application or permit under this chapter, DADS gives the person written notice:

(1) [(A)] of the reasons for the decision;

(2) [(B)] that the person, after exhausting administrative appeals, may file an action in a district court of Travis County for review of the evidence presented to DADS and DADS final action [its decision]; and

(3) [(C)] that the person must begin the judicial review by filing a petition with the court within 30 days after DADS [DADS] action is final and appealable.

§95.123. *Violations, Complaints, and Disciplinary Actions.*

(a) Filing of complaints. Any person may complain to DADS alleging that a person or program has violated the Texas Health and Safety Code, Chapter 242, Subchapter N; Texas Human Resources Code, §161.083; or this chapter.

(1) Persons who want to file a complaint against a medication aide [permit holder], training program, or another person, must notify DADS by calling 1-800-458-9858 or by writing the Medication Aide Permit Program, Department of Aging and Disability Services, P.O. Box 149030, Mail Code E-416, Austin, Texas 78714-9030.

(2) Anonymous complaints may be investigated by DADS if the complainant provides sufficient information.

(b) Investigation of complaints. If DADS initial investigation determines:

(1) the complaint does not come within DADS jurisdiction, DADS advises the complainant and, if possible, refers the complainant to the appropriate governmental agency for handling the complaint;

(2) there are insufficient grounds to support the complaint, DADS dismisses the complaint and gives written notice of the dismissal to the medication aide [permit holder] or person against whom the complaint has been filed and the complainant; or

(3) there are sufficient grounds to support the complaint, DADS may propose to deny, suspend, emergency suspend, revoke, or not renew a permit or to rescind program approval.

(c) Disciplinary actions. DADS may revoke, suspend, or refuse [revokes, suspends, or refuses] to renew a permit, or reprimand [reprimands] a medication aide [permit holder] for a violation of Texas Health and Safety Code, Chapter 242, Subchapter N; Texas Human Resources Code, §161.083; or this chapter. [In addition,] DADS may suspend a permit in an emergency or rescind DADS approval for an educational institution to offer a training program if the medication aide or educational institution fails to comply with the requirements in this chapter [approval].

(1) DADS may place on probation a person whose permit is suspended. DADS may require the person on probation:

(A) to report regularly to DADS on matters that are the basis of the probation;

(B) to limit practice to the areas prescribed by DADS; or

(C) to continue or pursue professional education until the person attains a degree of skill satisfactory to DADS in those areas that are the basis of the probation.

(2) Before [Prior to] institution of formal proceedings to revoke or suspend a permit or rescind program approval, DADS gives written notice to the medication aide [permit holder] or program of the facts or conduct alleged to warrant revocation, suspension, or rescission, and the medication aide [permit holder] or program must be given an opportunity, as described in the notice, to show compliance with all requirements of the Texas Health and Safety Code, Chapter 242, Subchapter N; Texas Human Resources Code, §161.083; or this chapter. When there is a finding of an alleged act of abuse, neglect, or misappropriation of resident property by a medication aide [permit holder] employed at a Medicaid-certified nursing facility or a Medicare-certified skilled nursing facility, DADS complies with the hearings process as provided in 42 Code of Federal Regulations §488.335.

(3) If denial, revocation, or suspension of a permit or rescission of program approval is proposed, DADS gives written notice that the medication aide [permit holder] or program must request,

in writing, a [formal] hearing within 30 days after [of] receipt of the notice, or the right to a hearing is waived and the permit is denied, revoked, or suspended or the program approval is rescinded.

(4) A [The formal] hearing is governed by Texas Administrative Code, Title 1, [conducted according to formal hearing procedures at 1 FAC] Chapter 357, Subchapter I (relating to Hearings under the Administrative Procedure Act) and Chapter 91 of this title (relating to Hearings under the Administrative Procedure Act).

(5) If an alleged act of abuse, neglect, or misappropriation by a medication aide who also is a certified nurse aide under the provisions of Chapter 94 of this title (relating to Nurse Aides) violates the rules in this chapter and Chapter 94, DADS complies with the [formal] hearing process described in paragraph (4) of this subsection. Through the [formal] hearing, determinations will be made on both the permit for medication aide practice and the certification [certificate] for nurse aide practice.

(d) Suspension, revocation, or nonrenewal. If DADS suspends a permit, the suspension remains in effect until DADS determines that the reason for suspension no longer exists or DADS revokes or determines not to renew the permit. DADS investigates before [prior to] making a determination, and:

(1) during the time of suspension, the suspended medication aide [permit holder] must return his permit to DADS;

(2) if a suspension overlaps a permit renewal date, the suspended medication aide [permit holder] may comply with the renewal procedures in §95.115 of this chapter (relating to Permit Renewal); however, DADS does not renew the permit until DADS determines that the reason for suspension no longer exists;

(3) if DADS revokes or does not renew a permit, a person may reapply for a permit by complying with the requirements and procedures in this chapter at the time of reapplication. DADS may refuse to issue a permit if the reason for revocation or nonrenewal continues to exist; and

(4) if a permit is revoked or not renewed, a medication aide [permit holder] must immediately return the permit to DADS.

(e) Complaints of abuse and neglect by medication aides who are issued a permit under Texas Health and Safety Code, Chapter 242, Subchapter N, and employed in a correctional facility, are investigated as described in §95.125(k) of this chapter (relating to Requirements for Corrections Medication Aides).

#### §95.125. Requirements for Corrections Medication Aides.

(a) Purpose. The purpose of this section is to provide the qualifications, conduct, and practice activities of a medication aide employed in a correctional facility or employed by a medical services contractor for a correctional facility.

(b) Supervision and applicable law and rules. A medication aide [permit holder] must function under the direct supervision of a licensed nurse on duty or on call by the correctional facility using the medication aide [permit holder]. A medication aide [permit holder] must:

(1) function in accordance with applicable law and rules relating to administration of medication and operation of a correctional facility; and

(2) comply with TDCJ rules applicable to personnel used in a correctional institution.

(c) Allowable and prohibited practices of a medication aide [permit holder].

(1) A medication aide [permit holder] may:

(A) observe and report to the correctional facility's charge nurse reactions and side effects to medication shown by an inmate;

(B) take and record vital signs before [prior to] the administration of medication which could affect or change the vital signs;

(C) administer regularly prescribed medication to an inmate if the medication aide: [which the permit holder has been trained to administer only after personally preparing (setting up) the medication to be administered. The medication aide must document the administered medication in the inmate's clinical record;]

(i) is trained to administer the medication;

(ii) personally prepares the medication or sets up the medication to be administered; and

(iii) documents the administration of the medication in the inmate's clinical record;

(D) administer oxygen per nasal cannula or a non-sealing mask only in an emergency, [immediately] after which [the emergency,] the medication aide [permit holder] must verbally notify the licensed nurse on duty or on call and appropriately document the action and notification;

(E) apply specifically ordered ophthalmic, otic, nasal, vaginal, and rectal medication;

(F) administer previously ordered PRN [pro re nata (PRN)] medication. A medication aide [permit holder] must document in the inmate's records, symptoms indicating the need for the medication, and the time the symptoms occurred;

(G) administer the initial dose of a medication; and

(H) order an inmate's medications from the correctional institution's pharmacy;[-]

(I) measure a prescribed amount of a liquid medication to be administered;

(J) break a tablet for administration to an inmate if:

(i) the licensed nurse on duty or on call has calculated the dosage; and

(ii) the inmate's medication card or its equivalent accurately documents how the tablet must be altered before administration; and

(K) crush medication if:

(i) authorization is obtained from the licensed nurse on duty or on call; and

(ii) the authorization is documented on the inmate's medication card or its equivalent.

(2) A medication aide [permit holder] may not:

(A) administer medication by the injection route including:

(i) intramuscular;

(ii) intravenous;

(iii) subcutaneous;

(iv) intradermal; and

(v) hypodermoclysis;

(B) administer medication used for intermittent positive pressure breathing [(HPPB)] treatments or any form of medication inhalation treatments;

(C) calculate an inmate's medication dose for administration; [~~except that the permit holder may:~~]

~~[(i) measure a prescribed amount of a liquid medication to be administered; and]~~

~~[(ii) break a tablet for administration to an inmate provided the licensed nurse on duty or on call has calculated the dosage. The inmate's medication card or its equivalent must accurately document how the tablet must be altered prior to administration;]~~

(D) crush medication, ~~except in accordance with subsection (c)(1)(K) of this section [unless authorization is obtained from the licensed nurse on duty or on call. The authorization to crush the specific medication must be documented on the inmate's medication card or its equivalent];~~

(E) administer medications or feedings by way of a tube inserted in a cavity of the body;

(F) receive or assume responsibility for reducing to writing a verbal or telephone order from a physician, dentist, or podiatrist;

(G) apply topical medications that involve the treatment of skin that is broken or blistered or when a specified aseptic technique is ordered by the attending licensed practitioner;

(H) steal, divert, or otherwise misuse medications;

(I) violate any provision of Texas Human Resources Code, §161.083, or this chapter;

(J) fraudulently procure or attempt to procure a permit;

(K) neglect to administer appropriate medications, as prescribed, in a responsible manner; or

(L) administer medications if the person is unable to do so with reasonable skill and safety to residents by reason of drunkenness or [~~and/or~~] excessive use of drugs, narcotics, chemicals, or any other type of material.

(d) Background and education requirements. ~~Before~~ [~~Prior to~~] applying for a corrections medication aide permit under Texas Human Resources Code, §161.083, an applicant must be:

(1) able to read, write, speak, and understand English;

(2) at least 18 years of age;

(3) free of communicable diseases and in suitable physical and emotional health to safely administer medications;

(4) a graduate of a high school or successfully passed [~~have~~] a general educational development test [~~equivalency diploma~~]; and

(5) employed in a correctional facility or by a medical service contractor for a correctional facility on the first day of an applicant's medication aide training program.

(e) Application. An applicant for a corrections medication aide permit under Texas Human Resources Code, §161.083 must submit an official Corrections Medication Aide application form to DADS.

(1) An applicant must submit the general statement enrollment form that contains:

(A) specific information regarding personal data, certain misdemeanor and felony convictions, work experience, education, and training;

(B) a statement that all the requirements in subsection (d) of this section were met before [~~prior to~~] the start of the program;

(C) a statement that the applicant understands that application fees submitted in the permit process are nonrefundable;

(D) a statement that the applicant understands material submitted in the application process are nonreturnable;

(E) a statement that the applicant understands that it is a misdemeanor to falsify any information submitted to DADS; and

(F) the applicant's dated and notarized signature.

(2) An applicant must submit a certified copy or a photocopy that has been notarized as a true and exact copy of an unaltered original of the applicant's high school graduation diploma or transcript.

(3) DADS considers a corrections medication aide permit application as officially submitted when DADS receives the permit application.

(4) DADS sends a notice listing the additional materials required to an applicant who does not complete the application. An application not completed by the day of the TDCJ [~~medication aide~~] final exam is void.

(5) DADS sends notice of application approval [~~acceptance or ineligibility, disapproval~~] or deficiency in accordance with §95.127 of this chapter (relating to Application Processing).

(f) Fees. An applicant must pay [~~The permit~~] application and permit renewal fees for a corrections medication aide permit [~~must be submitted~~] by cashier's check or money order made payable to the Department of Aging and Disability Services. All fees are nonrefundable, except as provided by Texas Government Code, Chapter 2005. The fee schedule is as follows:

(1) permit application fee--\$15;

(2) renewal fee--\$15;

(3) late renewal fees for permit renewals made after the permit expires:

(A) \$22.50 for an expired permit renewed from one to 90 days after expiration;

(B) \$30 for an expired permit renewed from 91 days to one year after expiration; and

(4) permit replacement fee--\$5.

(g) Examination procedures. TDCJ gives a written examination to each applicant at a site determined by TDCJ. An applicant with a disability, including an applicant with dyslexia as defined in Texas Education Code, §51.970 (relating to Instructional Material for Blind and Visually Impaired Students and Students with Dyslexia), may request a reasonable accommodation for the examination under the Americans with Disabilities Act.

(1) The applicant must meet the requirements of the TDCJ training program described in §95.119(d) of this chapter (relating to Training Program Requirements) before taking the written examination.

(2) The applicant must be tested on the subjects taught in the TDCJ training program curriculum and correctional facility clinical experience. The examination must test an applicant's knowledge of

accurate and safe drug therapy administered to a correctional facility inmate.

~~[(3) The examination must be taken after the applicant has successfully completed the TDCJ training program.]~~

~~(3) [(4)] TDCJ administers the examination and determines the passing grade.~~

~~(4) [(5)] TDCJ must inform DADS, on the DADS class roster form, of the final exam results for each applicant within 15 days after completion of the exam.~~

~~(5) [(6)] An applicant who is unable to attend the applicant's scheduled examination due to unforeseen circumstances must contact TDCJ to reschedule.~~

~~(6) [(7)] If an applicant fails the examination, TDCJ notifies DADS and the applicant in writing of the failure to pass the examination. The applicant may take one subsequent examination without having to re-enroll in the training program described in §95.119 of this chapter.~~

~~(7) [(8)] An applicant whose application for a permit is denied under §95.113 of this chapter (relating to Determination of Eligibility) is ineligible to take the examination.~~

(h) Determination of eligibility. DADS determines eligibility for a corrections medication aide permit applicant according to §95.113 of this chapter and subsections (d), (e), (f), and (g) of this section.

(i) Renewal. A permit must be renewed in accordance with §95.115 of this chapter (relating to Permit Renewal).

(j) Changes. Medication aides ~~[Permit holders]~~ must report changes in accordance with §95.117 of this chapter (relating to Changes).

(k) Violations, complaints, and disciplinary actions.

(1) Complaints. Any person may complain to DADS alleging that a person or program has violated Texas Human Resources Code, §161.083, or this chapter. DADS handles complaints in the manner set forth in §95.123 of this chapter (relating to Violations, Complaints, and Disciplinary Actions).

(2) Investigations of abuse and neglect complaints. Allegations of abuse and neglect of inmates by corrections medication aides are investigated by the TDCJ Office of Inspector General. After an investigation, the TDCJ Office of Inspector General issues a report to DADS with findings of abuse or neglect against the corrections medication aide. After reviewing the report and findings, DADS determines whether to initiate a formal proceeding to revoke, suspend, or refuse to renew a corrections medication aide permit. If DADS determines a formal proceeding to revoke, suspend, or refuse to renew a corrections medication aide permit should be initiated, §95.123(c) and (d) of this chapter apply. If DADS determines that no formal proceeding to revoke, suspend, or refuse to renew a corrections medication aide permit should be initiated, DADS dismisses the complaint against the corrections medication aide and gives written notice of the dismissal to the corrections medication aide.

(l) Section 95.121 of this chapter (relating to Permitting of Persons with Criminal Backgrounds) applies to corrections medication aides ~~[aide permit holders]~~ under this chapter.

~~[(m) Verification of corrections medication aide training.]~~

~~[(1) A person employed as a medication aide in a correctional facility under a permit issued by DADS under Health and Safety Code, Chapter 242, Subchapter N, must submit to DADS a verification document issued by TDCJ. The verification document must certify that~~

~~the person is employed as a medication aide in a correctional facility in good standing and received training equivalent to the TDCJ training described in §95.119 of this chapter. If the person fails to submit the verification by the person's first permit renewal date after January 1, 2012, the person must:]~~

~~[(A) comply with subsections (e), (f), and (g) of this section to obtain a corrections medication aide permit; or]~~

~~[(B) comply with this chapter to obtain a nursing facility permit under Health and Safety Code, Chapter 242, Subchapter N.]~~

~~[(2) A medication aide who submits the verification described in paragraph (1) of this subsection must comply with the permit renewal procedures of §95.115 of this chapter and report any changes to his name and address as required by §95.117 of this chapter.]~~

#### *§95.127. Application Processing.*

(a) Time periods. DADS complies with the following procedures in processing applications for a facility and corrections medication aide permit and renewal.

(1) The following periods of time ~~[must]~~ apply from the date DADS receives ~~[of receipt of]~~ an application until the date DADS issues ~~[of issuance of]~~ a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required. DADS may issue a ~~[A]~~ written notice stating that the application has been approved instead ~~[may be sent in lieu]~~ of a ~~[the]~~ notice that the application is complete ~~[of acceptance of a complete application]~~. The time periods are as follows:

(A) letter of acceptance of application for a permit--21 days ~~[14 workdays]~~;

(B) letter of application deficiency or ~~[and/or]~~ ineligibility--21 days ~~[14 workdays]~~;

(C) acceptance of renewal permit--21 days ~~[20 workdays]~~; and

(D) letter of renewal of permit deficiency--21 days ~~[20 workdays]~~.

(2) The following periods of time ~~[must]~~ apply from the date DADS receives ~~[receipt of]~~ the last item necessary to complete the application until the date DADS issues ~~[of issuance of]~~ written notice approving or denying the application. For the purpose of this section, an application is not considered complete until any required examination has been successfully completed by the applicant. The time periods for denial include notification of a ~~[the]~~ proposed decision and an ~~[of the]~~ opportunity, if required, for the applicant to show compliance with law, and an ~~[of the]~~ opportunity to request ~~[for]~~ a ~~[formal]~~ hearing. The time periods are as follows:

(A) issuance of initial permit--60 days ~~[90 workdays]~~;

(B) letter of denial for a permit or renewal permit--60 days ~~[90 workdays]~~; and

(C) issuance of renewal permit after receipt of documentation of the completion of all renewal requirements--20 days ~~[workdays]~~.

(b) Reimbursement of fees.

(1) ~~If~~ ~~[In the event]~~ an application is not processed in the time periods stated in subsection (a) of this section, the applicant has the right to request reimbursement of all fees paid in that particular application process. Application for reimbursement must be made to the program administrator for DADS Medication Aide Permit Program. If the program administrator does not agree that the time period has been

violated or finds that good cause existed for exceeding the time period, the request must be denied.

(2) Good cause for exceeding the time period exists if the number of applications for a permit and permit renewal exceeds by 15 percent [~~±5%~~] or more the number of applications processed in the same calendar quarter the preceding year; another public or private entity relied upon by DADS in the application process caused the delay; or any other condition exists giving DADS good cause for exceeding the time period.

(c) Appeal. If a request for reimbursement under subsection (b) of this section is denied by the program administrator, the applicant may appeal in writing to the Texas Health and Human Services Commission's hearings section to request a hearing on the reimbursement denial. ~~A [The] hearing is governed by Texas Administrative Code, Title 1, [will be held pursuant to applicable provisions of the procedures at 1 TAC] Chapter 357, Subchapter I (relating to Hearings under the Administrative Procedure Act), and Chapter 91 of this title (relating to Hearings under the Administrative Procedure Act).~~

§95.128. *Home Health Medication Aides.*

(a) General.

(1) A person may not administer medication to a client unless the person:

(A) holds a current license under state law that [which] authorizes the licensee to administer medication;

(B) holds a current permit issued under this section and acts under the delegated authority of an RN [a registered nurse (RN)] licensed by the Texas Board of Nursing which authorizes the licensee to administer medication;

(C) administers a medication to a client ~~[of an agency]~~ in accordance with rules of the BON [Texas Board of Nursing] that permit delegation of the administration of medication to a person not holding a permit under this section; or

(D) administers noninjectable medication under circumstances authorized by the memorandum of understanding between the BON [Texas Board of Nursing] and DADS.

(2) A HCSSA that provides [An agency providing] licensed and certified home health services, licensed home health services, hospice services, or personal assistance services may use a home health medication aide. If there is a direct conflict between the requirements of this chapter and federal regulations, the requirements that are more stringent apply to the licensed and certified HCSSA [home health services agency].

(3) Exemptions are as follows.

(A) A person may administer medication to a client ~~[of an agency]~~ without the license or permit as required in paragraph (1) of this subsection if the person is:

(i) a graduate nurse holding a temporary permit issued by the BON [Texas Board of Nursing];

(ii) a student enrolled in an accredited school of nursing or program for the education of RNs who is administering medications as part of the student's clinical experience;

(iii) a graduate vocational nurse holding a temporary permit issued by the BON [Texas Board of Nursing];

(iv) a student enrolled in an accredited school of vocational nursing or program for the education of vocational nurses who is administering medications as part of the student's clinical experience; or

(v) a trainee in a medication aide training program approved by DADS under this chapter who is administering medications as part of the trainee's clinical experience.

(B) Supervision of an exempt person described in subparagraph (A) of this paragraph is as follows.

(i) A person described in:

(I) subparagraph (A)(i) of this paragraph shall be supervised by an RN;

(II) subparagraph (A)(ii) or (iv) of this paragraph shall be supervised by the student's instructor; or

(III) subparagraph (A)(iii) of this paragraph shall be supervised by an RN or licensed vocational nurse.

(ii) Supervision must be on-site.

(C) An exempt person described in this subsection may not be used in a supervisory or charge position.

(b) Required actions.

(1) If a HCSSA provides home health medication aide services the HCSSA must employ [are provided, an agency employs] a home health medication aide to provide the home health medication aide services. The HCSSA must employ or contract with[, and] an RN [shall be employed by or under contract with the agency] to perform the initial health assessment, [;] prepare the client care plan, [;] establish the medication list, medication administration record, and medication aide assignment sheet, [;] and supervise the home health medication aide. The RN must be available to supervise the home health medication aide when home health medication aide services are provided.

(2) The clinical records of a client [patient] using a home health medication aide must include a statement signed by the client or family acknowledging receipt of the list of permitted and prohibited acts of a home health medication aide.

(3) The RN must be knowledgeable of ~~[the rules of]~~ DADS rules governing home health medication aides and must ensure [assure] that the home health medication aide is in compliance with the Texas Health and Safety Code, Chapter 142, Subchapter B.

(4) A home health medication aide [permit holder] must:

(A) function under the supervision of an RN;

(B) comply with [function in accordance with] applicable law and this chapter relating to administration of medication and operation of the HCSSA [agency];

(C) comply with DADS rules applicable to personnel used in a HCSSA [an agency]; and

(D) comply with this section and §97.701 of this title (relating to Home Health Aides) if the person will be used as a home health aide and a home health medication aide.

(5) The RN must make a supervisory visit while the medication aide is in the client's residence in accordance with §97.298 of this title (relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel and Tasks Not Requiring Delegation).

(c) Permitted actions. A home health medication aide [permit holder] is permitted to:

(1) observe and report to the HCSSA [agency's] RN and document in the clinical record any [note] reactions and side effects to medication shown by a client;

(2) take and record vital signs of a client before administering [prior to the administration of] medication that that [which] could affect or change the vital signs;

(3) administer regularly prescribed medication to a client if the medication aide: [which the permit holder has been trained to administer only after personally preparing (setting up) the medication to be administered. The medication aide must document the administered medication in the client's clinical note;]

(A) is trained to administer the medication;

(B) personally prepares the medication or sets up the medication to be administered; and

(C) documents the administration of the medication in the client's clinical record;

(4) administer oxygen per nasal cannula or a non-sealing face mask only in an emergency; ~~Immediately~~ after which ~~[the emergency;]~~ the medication aide ~~[permit holder]~~ must verbally notify the supervising RN and appropriately document the action and notification;

(5) apply specifically ordered ophthalmic, otic, nasal, vaginal, topical, and rectal medication unless prohibited by subsection (d)(10) of this section; ~~[and]~~

(6) administer medications only from the manufacturer's original container or the original container in which the medication had been dispensed and labeled by the pharmacy with all information mandated by the Texas State Board of Pharmacy; ~~and[.]~~

(7) administer previously ordered PRN medication if:

(A) the HCSSA's RN authorizes the medication;

(B) the medication aide documents in the client's clinical notes the symptoms indicating the need for medication and the time the symptoms occurred;

(C) the medication aide documents in the client's clinical notes that the HCSSA's RN was contacted, symptoms were described, and the HCSSA's RN granted permission to administer the medication, including the time of contact;

(D) the medication aide obtains authorization to administer the medication each time the symptoms occur; and

(E) the medication aide ensures that the client's clinical record is co-signed by the RN who gave permission within seven days after the notes are incorporated into the clinical record;

(8) measure a prescribed amount of a liquid medication to be administered;

(9) break a tablet for administration to a client if:

(A) the client's medication administration record accurately documents how the tablet must be altered before administration; and

(B) the licensed nurse on duty or on call has calculated the dosage;

(10) crush medication, if:

(A) authorization has been given in the original physician's order or the medication aide obtains authorization from the HCSSA's RN; and

(B) the medication aide documents the authorization on the client's medication administration record.

(d) Prohibited actions. A home health medication aide [Permit holders] must not:

(1) administer a medication by any injectable route, including[.];

(A) intramuscular route;

(B) intravenous route;

(C) subcutaneous route;

(D) intra dermal route; and

(E) hypodermoclysis route;

(2) administer medication used for intermittent positive pressure breathing [(IPPB)] treatment or any form of medication inhalation treatments;

(3) administer previously ordered PRN [pro re nata (PRN)] medication except in accordance with subsection (c)(7) of this section; [unless authorization is obtained from the agency's RN. If authorization is obtained, the permit holder must;]

[(A) document in the client's clinical notes symptoms indicating the need for medication and the time the symptoms occurred;]

[(B) document in the client's clinical notes that the agency's RN was contacted, symptoms were described, and permission was granted to administer the medication and the time of contact;]

[(C) obtain permission to administer the medication each time the symptoms occur in the client; and]

[(D) insure that the client's clinical record is co-signed by the RN who gave permission within seven calendar days of incorporation of the notes into the clinical record;]

(4) administer ~~[the initial dose of a]~~ medication that, according to the client's clinical records, has not been previously administered to the [a] client; ~~Whether a medication has been previously administered must be determined by the client's current clinical records;~~

(5) calculate a client's medication doses for administration; ~~[except that the permit holder may measure a prescribed amount of a liquid medication to be administered or break a scored tablet for administration to a client provided the RN has calculated the dosage. The client's medication administration record must accurately document how the tablet must be altered prior to administration;]~~

(6) crush medication, except in accordance with subsection (c)(10) of this section [unless authorization has been given in the original physician's order or obtained from the agency's RN. The authorization to crush the specific medication must be documented on the client's medication administration record];

(7) administer medications or feedings by way of a tube inserted in a cavity of the body except as specified §97.404(h) [§97.298] of this title;

(8) receive or assume responsibility for reducing to writing a verbal or telephone order from a physician, dentist, ~~[or]~~ podiatrist or advanced practice nurse;

(9) order a client's medication from a pharmacy;

(10) apply topical medications that involve the treatment of skin that is broken or blistered when a specified aseptic technique is ordered by the attending physician;

(11) administer medications from any container other than the manufacturer's original container or the original container in which the medication had been dispensed and labeled by the pharmacy with all information mandated by the Texas State Board of Pharmacy;

- (12) steal, divert, or otherwise misuse medications;
- (13) violate any provision of the statute or of this chapter;
- (14) fraudulently procure or attempt to procure a permit;
- (15) neglect to administer appropriate medications, as prescribed, in a responsible manner; or
- (16) administer medications if the person is unable to do so with reasonable skill and safety to clients by reasons of drunkenness, inappropriate [~~excessive~~] use of drugs, narcotics, chemicals, or any other type of material.

(e) Applicant qualifications. Each applicant for a permit issued under Texas Health and Safety Code, Chapter 142, Subchapter B must complete a training program. Before enrolling [~~Prior to enrollment~~] in a training program and applying [~~prior to application~~] for a permit under this section, all applicants [~~persons~~]:

- (1) must be able to read, write, speak, and understand English;
- (2) must be at least 18 years of age;
- (3) must be free of communicable diseases and in suitable physical and emotional health to safely administer medications;
- (4) must be a graduate of an accredited [a] high school or have proof of successfully passing a general educational development test; [~~an equivalent diploma or higher degree; and~~]
- (5) must have satisfactorily completed a home health aide training and competency evaluation program or a competency evaluation program under §97.701 of this title;[-]

(6) must not have been convicted of a criminal offense listed in Texas Health and Safety Code, §250.006(a), or convicted of a criminal offense listed in Texas Health and Safety Code, §250.006(b) within five years before the date DADS receives a permit application;

- (7) must not be listed as unemployable on the EMR; and
- (8) must not be listed with a revoked or suspended status on the NAR.

(f) Nursing graduates. A person who is a graduate of an accredited school of nursing and who does not hold a license to practice professional or vocational nursing meets the training requirements for issuance of a permit under this section if the date of graduation from the nursing school was no earlier than January 1 of the year immediately preceding the year of application for a permit under this section.

- (1) The applicant must submit a DADS application form to DADS. The applicant must meet the requirements of subsection (e)(1) - (6) [~~(e)(1) - (4)~~] of this section.
- (2) The application must be accompanied by the combined permit application and examination fee.
- (3) The applicant must include an official transcript documenting graduation from an accredited school of nursing.
- (4) DADS acknowledges receipt of the application by sending the applicant a copy of this chapter and DADS open book examination.
- (5) The applicant must complete the open book examination and return it to DADS by the date given in the examination notice.
- (6) The applicant must complete DADS written examination. DADS determines the site of the examination. DADS denies the application of an applicant failing to schedule and take the examination by the date given in the examination notice.

(7) An open book or written examination may not be retaken if the applicant fails.

(8) Upon successful completion of the two examinations, DADS evaluates all application documents submitted by the applicant.

(9) DADS notifies the applicant in writing of the examination results.

(g) Nursing students. A person who is attending or has attended an accredited school of nursing and who does not hold a license to practice professional or vocational nursing meets the training requirements for issuance of a permit under this section if the person:

- (1) attended the nursing school no earlier than January 1 of the year immediately preceding the year of application for a permit under this section;
- (2) successfully completed courses at the nursing school that cover DADS curriculum for a home health medication aide training program;
- (3) submits a statement with the person's application for a permit under this section, that is signed by the nursing school's administrator or other authorized individual who is responsible for determining that the courses that he or she certifies cover DADS curriculum and certifies that the person completed the courses specified under paragraph (2) of this subsection[- The administrator is responsible for determining that the courses that he or she certifies cover DADS curriculum. The statement must be submitted with the person's application for a permit under this section]; and
- (4) complies with subsection (f)(1) - (2) and (4) - (9) of this section.

(h) Reciprocity. A person who holds a valid license, registration, certificate, or permit as a home health medication aide issued by another state whose minimum standards or requirements are substantially equivalent to or exceed the requirements of this section in effect at the time of application may request a waiver of the training program requirement as follows:

- (1) The applicant must submit a DADS application form to DADS. The applicant must meet the requirements of subsection (e)(1) - (4) of this section.
- (2) The application must be accompanied by the combined permit application and exam fee.
- (3) The application must include a current copy of the rules of the other state governing its licensing and regulation of home health medication aides, a copy of the legal authority, including the law, act, code, or section, [~~( law, act, code, section, or otherwise)~~] for the state's licensing program, and a certified copy of the license or certificate by which the reciprocal permit is requested.
- (4) DADS acknowledges receipt of the application by sending the applicant a copy of this chapter and of DADS open book examination.
- (5) DADS may contact the issuing agency to verify the applicant's status with the agency.
- (6) The applicant must complete DADS open book examination and return it to DADS by the date given in the examination notice.
- (7) The applicant must complete DADS written examination. The site of the examination is determined by DADS. DADS denies the application of an applicant failing to schedule and take the examination by the date given in the examination notice.

(8) An open book or written examination may not be taken if the applicant fails.

(9) Upon successful completion of the two examinations, DADS evaluates all application documents submitted by the applicant.

(10) DADS notifies the applicant in writing of the examination results.

(i) Application by trainees. An applicant under subsection (e) of this section must submit to DADS, no later than 30 ~~calendar~~ days after enrollment in a training program, an application, including all required information and documentation on DADS forms.

(1) DADS considers an application as officially submitted when DADS receives the nonrefundable combined permit application and examination fee payable to the Department of Aging and Disability Services. The fee required by subsection (n) of this section must accompany the application form.

(2) The general statement enrollment form must contain the following application material that is required of all applicants:

(A) specific information regarding personal data, certain misdemeanor and felony convictions, work experience, education, and training;

(B) a statement that all of the requirements in subsection (e) of this section were met before ~~prior to~~ the start of the program;

(C) a statement that the applicant understands that the application fee submitted in the permit process is nonrefundable;

(D) a statement that the applicant understands that materials submitted in the application process are not returnable;

(E) a statement that the applicant understands that it is a misdemeanor to falsify any information submitted to DADS; and

(F) the applicant's signature that has been dated and notarized.

(3) The applicant must submit a certified copy or notarized ~~[a photocopy [that has been notarized as a true and exact copy]]~~ of an unaltered original of the applicant's high school graduation diploma or transcript, or an equivalent document demonstrating that the applicant successfully passed a general educational development test, [GED diploma or higher degree] unless the applicant is applying under subsection (f) of this section.

(4) DADS sends a notice listing the additional materials required to an applicant who does not complete the application. An application not completed within 30 ~~calendar~~ days after the date of the notice will be void.

(5) DADS sends notice of application acceptance, disapproval, or deficiency in accordance with subsection (q) of this section.

(j) Examination. DADS gives a written examination to each applicant at a site DADS determines.

(1) No final examination may be given to an applicant until the applicant has met the requirements of subsections (e) and (i) of this section, and if applicable, subsections (f), (g), or (h) of this section.

(2) An applicant with a disability, including an applicant with dyslexia as defined in Texas Education Code §51.970 (relating to Instructional Material for Blind and Visually Impaired Students and Students with Dyslexia), may request a reasonable accommodation for the examination under the Americans with Disabilities Act.

(3) The applicant must be tested on the subjects taught in the training program curricula and clinical experience. The examination covers an applicant's knowledge of accurate and safe drug therapy to ~~[an agency's]~~ clients.

(4) A training program must notify DADS at least four weeks before ~~[prior to]~~ its requested examination date.

(5) DADS determines the passing grade on the examination.

(6) DADS notifies in writing an applicant who fails the examination.

(A) DADS may give an applicant under subsection (e) of this section one subsequent examination, without additional payment of a fee, upon the applicant's written request to DADS.

(B) A subsequent examination must be completed by the date given on the failure notification. DADS determines the site of the examination.

(C) Another examination will not be permitted if the student fails the subsequent examination unless the student enrolls and successfully completes another training program.

(7) An applicant who is unable to attend the applicant's scheduled examination due to unforeseen circumstances may be given an examination at another time without payment of an additional fee upon the applicant's written request to DADS. The examination must be completed within 45 ~~calendar~~ days from the date of the originally scheduled examination. DADS determines the site for the rescheduled examination.

(8) An applicant whose application for a permit will be disapproved under subsection (k) of this section is ineligible to take the examination.

(k) Determination of eligibility. DADS approves or disapproves all applications. DADS sends notices of application approval, disapproval, or deficiency in accordance with subsection (q) of this section.

(1) DADS denies an application for a permit if the person has:

(A) not met the requirements of subsections (e) - (i) of this section, if applicable;

(B) failed to pass the examination prescribed by DADS as set out in subsection (j) of this section;

(C) failed to or refused to properly complete or submit any application form, endorsement, or fee, or deliberately presented false information on any form or document required by DADS;

(D) violated or conspired to violate the Texas Health and Safety Code, Chapter 142, Subchapter B, or any provision of this chapter; or

(E) been convicted of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a medication aide ~~[permit holder]~~ as set out in subsection (r) of this section.

(2) If, after review, DADS determines that the application should not be approved, DADS gives the applicant written notice of the reason for the proposed decision and of the opportunity for a formal hearing in accordance with subsection (r) of this section.

(l) Medication aide ~~[Permit renewal]~~. Home health medication aides must comply with the following permit renewal requirements.

- (1) When issued, a permit is valid for one year.
- (2) A medication aide [permit holder] must renew the permit annually.
- (3) The renewal date of a permit is the last day of the current permit.

(4) Each medication aide [permit holder] is responsible for renewing the permit before the expiration date. Failure to receive notification from DADS before the expiration date of the permit does not excuse the medication aide's [permit holder's] failure to file for timely renewal.

(5) A medication aide [permit holder] must complete a seven hour [se~~ven~~-hour] continuing education program approved by DADS before [prior to] expiration of the permit in order to renew the permit. Continuing education hours are not required for the first renewal. After a permit is renewed for the first time, the medication aide [permit holder] must earn approved continuing education hours to have the permit renewed again.

(6) DADS denies renewal of the permit of a medication aide [permit holder] who is in violation of the Texas Health and Safety Code, Chapter 142, Subchapter B, or this chapter at the time of application for renewal.

(7) DADS denies renewal of the permit of a medication aide who has been convicted of a criminal offense listed in Texas Health and Safety Code, §250.006(a), or convicted of a criminal offense listed in Texas Health and Safety Code, §250.006(b) within five years before the date DADS receives the renewal application.

(8) DADS denies renewal of the permit of a medication aide who is listed as unemployable on the EMR.

(9) [(7)] Home health medication aide permit renewal procedures are as follows.

(A) At least 30 [calendar] days before the expiration date of a permit, DADS sends to the medication aide [permit holder] at the address in DADS records notice of the expiration date of the permit and the amount of the renewal fee due and a renewal form that the medication aide [permit holder] must complete and return with the required renewal fee.

(B) The renewal form must include the preferred mailing address of the medication aide [permit holder] and information on certain misdemeanor and felony convictions. It must be signed by the medication aide [permit holder].

(C) DADS issues a renewal permit to a medication aide [permit holder] who has met all requirements for renewal.

(D) DADS does not renew a permit if the medication aide [permit holder] does not complete the required seven-hour continuing education requirement. Successful completion is determined by the student's instructor. An individual who does not meet the continuing education requirement must complete a new program, application, and examination in accordance with the requirements of this section.

(E) DADS does not renew a permit if renewal is prohibited by the Texas Education Code, §57.491, concerning defaults on guaranteed student loans.

(F) If a medication aide [permit holder] fails to timely renew his or her permit because the medication aide [permit holder] is or was on active duty with the armed forces of the United States of America serving outside the State of Texas, the medication aide [permit holder] may renew the permit pursuant to this subparagraph.

(i) Renewal of the permit may be requested by the medication aide [permit holder], the medication aide's [permit holder's] spouse, or an individual having power of attorney from the medication aide [permit holder]. The renewal form must include a current address and telephone number for the individual requesting the renewal.

(ii) Renewal may be requested before or after the expiration of the permit.

(iii) A copy of the official orders or other official military documentation showing that the medication aide [permit holder] is or was on active military duty serving outside the State of Texas must be filed with DADS along with the renewal form.

(iv) A copy of the power of attorney from the medication aide [permit holder] must be filed with DADS along with the renewal form if the individual having the power of attorney executes any of the documents required in this subparagraph.

(v) A medication aide [permit holder] renewing under this subparagraph must pay the applicable renewal fee.

(vi) A medication aide [permit holder] is not authorized to act as a home health medication aide after the expiration of the permit unless and until the medication aide [permit holder] actually renews the permit.

(vii) A medication aide [permit holder] renewing under this subparagraph is not required to submit any continuing education hours.

(10) [(8)] A person whose permit has expired for not more than two years may renew the permit by submitting to DADS:

(A) the permit renewal form;

(B) all accrued renewal fees;

(C) proof of having earned, during the expired period, seven hours in an approved continuing education program for each year or part of a year that the permit has been expired; and

(D) proof of having earned, before [prior to] expiration of the permit, seven hours in an approved continuing education program as required in paragraph (5) of this subsection.

(11) [(9)] A permit that is not renewed during the two years after expiration may not be renewed.

(12) [(10)] DADS issues notices [Notices] of permit renewal approval, disapproval, or deficiency must be in accordance with subsection (q) of this section [(relating to Processing Procedures)].

(m) Changes.

(1) A medication aide [permit holder] must notify DADS within 30 [calendar] days after changing his or her address or name.

(2) DADS replaces a lost, damaged, or destroyed permit upon receipt of a completed duplicate permit request form and permit replacement fee.

(n) Fees.

(1) The schedule of fees is:

(A) combined permit application and examination fee--\$25;

(B) renewal fee--\$15; and

(C) permit replacement fee--\$5.00.

(2) All fees are nonrefundable.

(3) An applicant or home health medication aide [~~permit holder~~] must pay the required fee by cashier's check or money order made payable to the Department of Aging and Disability Services. All fees are nonrefundable, except as provided by Texas Government Code, Chapter 2005.

(o) Training program requirements.

(1) An educational institution accredited by the Texas Workforce Commission or Texas Higher Education Coordinating Board that desires to offer a training program must file an application for approval on a DADS form. Programs sponsored by state agencies for the training and preparation of its own employees are exempt from the accreditation requirement. An approved institution may offer the training program and a continuing education program.

(A) All signatures on DADS forms and supporting documentation must be originals.

(B) The application includes:

(i) the anticipated dates of the program;

(ii) the location(s) of the classroom course(s);

(iii) the name of the coordinator of the program;

(iv) a list that includes the address and telephone number of each instructor [~~instructors~~] and any other person responsible for the conduct of the program[- ~~The list must include addresses and telephone numbers for each instructor~~]; and

(v) an outline of the program content and curriculum if the curriculum covers more than DADS established curricula.

(C) DADS may conduct an inspection of the classroom site.

(D) DADS sends notice of approval or proposed disapproval of the application to the program within 30 [~~calendar~~] days of the receipt of a complete application. If the application is proposed to be disapproved due to noncompliance with the requirements of the Texas Health and Safety Code, Chapter 142, Subchapter B, or of this chapter, the reasons for disapproval are given in the notice.

(E) An applicant may request a hearing on a proposed disapproval in writing within ten [~~calendar~~] days of receipt of the notice of the proposed disapproval. The hearing must be in accordance with subsection (r) of this section and the Administrative Procedure Act, Texas Government Code, Chapter 2001. If no request is made, the applicant is deemed to have waived the opportunity for a hearing, and the proposed action may be taken.

(2) The program includes, but is not limited to, the following instruction and training:

(A) procedures for preparation and administration of medications;

(B) responsibility, control, accountability, storage, and safeguarding of medications;

(C) use of reference material;

(D) documentation of medications in the client's clinical records, including PRN medications;

(E) minimum licensing standards for agencies covering pharmaceutical service, nursing service, and clinical records;

(F) federal and state certification standards for participation under the Social Security Act, Title XVIII (Medicare), pertaining to pharmaceutical service, nursing service, and clinical records;

(G) lines of authority in the agency, including agency personnel who are immediate supervisors;

(H) responsibilities and liabilities associated with the administration and safeguarding of medications;

(I) allowable and prohibited practices of a medication aide [~~permit holders~~] in the administration of medication;

(J) drug reactions and side effects of medications commonly administered to home health clients;

(K) instruction on universal precautions; and

(L) the provisions of this chapter.

(3) The program consists of 140 hours in the following order: 100 hours of classroom instruction and training, 20 hours of return skills demonstration laboratory, ten hours of clinical experience including clinical observation and skills demonstration under the supervision of an RN in an agency, and ten more hours in the return skills demonstration laboratory. A classroom or laboratory hour is 50 [~~60~~] minutes [~~of actual classroom or laboratory time.~~

(A) Class time will not exceed four hours in a 24-hour period.

(B) The completion date of the program must be a minimum of 60 [~~calendar~~] days and a maximum of 180 [~~calendar~~] days from the starting date of the program.

(C) Each program must follow the curricula established by DADS.

(4) At least seven [~~calendar~~] days before [~~prior to~~] the commencement of each program, the coordinator must notify DADS in writing of the starting date, the ending date, the daily hours of the program, and the projected number of students.

(5) A change in any information presented by the program in an approved application including, but not limited to, location, instructorship, and content must be approved by DADS before [~~prior to~~] the program's effective date of the change.

(6) The program instructors of the classroom hours must be an RN and registered pharmacist.

(A) The nurse instructor must have a minimum of two years of full-time experience in caring for the elderly, chronically ill, or pediatric clients or been employed full time for a minimum of two years as an RN with a home and community support services agency. An instructor in a school of nursing may request a waiver of the experience requirement.

(B) The pharmacist instructor must have a minimum of one year of experience and be currently employed as a practicing pharmacist.

(7) The coordinator must provide clearly defined and written policies regarding each student's clinical experience to the student, the administrator, and the supervising nurse of the agency used for the clinical experience.

(A) The clinical experience must be counted only when the student is observing or involved in functions involving medication administration and under the direct, contact supervision of an RN.

(B) The coordinator is responsible for final evaluation of the student's clinical experience.

(8) Upon successful completion of the program, each program issues to each student a certificate of completion, including the

program's name, the student's name, the date of completion, and the signature of the program coordinator.

(9) Within 15 ~~calendar~~ days after completion of the course, each program must inform DADS on the DADS class roster form of the satisfactory completion for each student.

(p) Continuing education. The continuing education training program is as follows.

(1) The program must consist of at least seven clock hours of classroom instruction.

(2) The instructor must meet the requirements in subsection (o)(6) of this section.

(3) Each program must follow the curricula established by DADS.

(4) Within 15 days after completion of the course, each program must inform DADS on the DADS class roster form of the name of each medication aide ~~[permit holder]~~ who has completed the course.

(q) Processing procedures. DADS complies with the following procedures in processing applications of home health medication aide permits and renewal of permits.

(1) The following periods of time apply from the date of receipt of an application until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required. A written notice stating that the application has been approved may be sent in lieu of the notice of acceptance of a complete application. The time periods are:

(A) letter of acceptance of an application for a home health medication aide permit--14 ~~working~~ days; and

(B) letter of application or renewal deficiency--14 ~~working~~ days.

(2) The following periods of time shall apply from the receipt of the last item necessary to complete the application until the date of issuance of written notice approving or denying the application. The time periods for denial include notification of proposed decision and of the opportunity, if required, to show compliance with the law and of the opportunity for a formal hearing. An application is not considered complete until the required documentation and fee have been submitted by the applicant. The time periods are as follows:

(A) the issuance of an initial permit--90 ~~calendar~~ days;

(B) the letter of denial for a permit--90 ~~calendar~~ days; and

(C) the issuance of a renewal permit--20 ~~calendar~~ days.

(3) In the event an application is not processed in the time period stated in paragraphs (1) and (2) of this subsection, the applicant has the right to request reimbursement of all fees paid in that particular application process. Request for reimbursement is made to the ~~[director of the]~~ Home Health Medication Aide Permit Program. If the director of the Home Health Medication Aide Permit Program does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request will be denied.

(4) Good cause for exceeding the time period exists if the number of applications for initial home health medication aide permits and renewal permits exceeds by 15 percent ~~[15%]~~ or more the number of applications processed in the same calendar quarter of the preceding

year; another public or private entity relied upon by DADS in the application process caused the delay; or any other condition exists giving DADS good cause for exceeding the time period.

(5) If a request for reimbursement under paragraph (3) of this subsection is denied by the director of the Home Health Medication Aide Permit Program, the applicant may appeal to the DADS commissioner ~~[of DADS]~~ for a timely resolution of any dispute arising from a violation of the time periods. The applicant must give written notice to the DADS commissioner ~~[at the address of DADS]~~ that the applicant ~~[he or she]~~ requests full reimbursement of all fees paid because the ~~[his or her]~~ application was not processed within the applicable time period. The applicant must mail the reimbursement request to Texas Department of Aging and Disability Services, John H. Winters Human Services Complex, 701 W. 51st St., P.O. Box 149030, Austin, Texas 78714-9030. The director of the Home Health Medication Aide Permit Program must submit a written report of the facts related to the processing of the application and of any good cause for exceeding the applicable time period to the DADS commissioner. The DADS commissioner provides written notice of the commissioner's decision to the applicant and the director of the Home Health Medication Aide Permit Program. An appeal is decided in the applicant's favor if the applicable time period was exceeded and good cause was not established. If the appeal is decided in favor of the applicant, DADS reimburses in full, ~~[reimbursement of]~~ all fees paid in that particular application process ~~[are made]~~.

(r) Denial, suspension, or revocation.

(1) DADS may deny, suspend, emergency suspend, or revoke a permit or program approval if the medication aide ~~[permit holder]~~ or program fails to comply with any provision of the Texas Health and Safety Code, Chapter 142, Subchapter B, or this chapter.

(2) DADS may also take action under paragraph (1) of this subsection for fraud, misrepresentation, or concealment of material fact on any documents required to be submitted to DADS or required to be maintained or complied by the medication aide ~~[permit holder]~~ or program pursuant to this chapter.

(3) DADS may suspend or revoke an existing permit or program approval or disqualify a person from receiving a permit or program approval because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a home health medication aide or training program. In determining whether a conviction directly relates, DADS considers the elements set forth in Texas Occupations Code §55.022 and §55.023 ~~[§97.601 of this title (relating to Enforcement Actions)]~~.

(4) If DADS proposes to deny, suspend, or revoke a home health medication aide permit or to rescind a home health medication aide program approval, DADS notifies the medication aide ~~[permit holder]~~ or home health medication aide program by certified mail, return receipt requested, of the reasons for the proposed action and offers the medication aide ~~[permit holder]~~ or home health medication aide program an opportunity for a hearing.

(A) The medication aide ~~[permit holder]~~ or home health medication aide program must request a hearing within 15 ~~calendar~~ days after ~~[of]~~ receipt of the notice. Receipt of notice is presumed to occur on the tenth ~~calendar~~ day after the notice is mailed to the last address known to DADS unless another date is reflected on a United States Postal Service return receipt.

(B) The request must be in writing and submitted to the Department of Aging and Disability Services, Medication Aide Program, Mail Code E-416, P.O. Box 149030, Austin, Texas 78714-9030.

(C) If the medication aide [permit holder] or home health medication aide program does not request a hearing, in writing, [within] 15 [calendar] days after [of] receipt of the notice, the medication aide [permit holder] or home health medication aide program is deemed to have waived the opportunity for a hearing and the proposed action is taken.

(5) DADS may suspend a permit to be effective immediately when the health and safety of persons are threatened. DADS notifies the medication aide [permit holder] of the emergency action by certified mail, return receipt requested, or personal delivery of the notice and of the effective date of the suspension and the opportunity for the medication aide [permit holder] to request a hearing.

(6) All hearings are governed by [conducted pursuant] to Texas Government Code, Chapter 2001, and Texas Administrative Code, Title 1, [the formal hearing procedures at 4 TAC] §§357.481 - 357.490.

(7) If the medication aide [permit holder] or program fails to appear or be represented at the scheduled hearing, the medication aide [permit holder] or program has waived the right to a hearing and the proposed action is taken.

(8) If DADS suspends a home health medication aide permit, the suspension remains in effect until DADS determines that the reason for suspension no longer exists, revokes the permit, or determines not to renew the permit. DADS investigates before [prior to] making a determination.

(A) During the time of suspension, the suspended medication aide [permit holder] must return the [his or her] permit to DADS.

(B) If a suspension overlaps a renewal date, the suspended medication aide [permit holder] may comply with the renewal procedures in this chapter; however, DADS does not renew the permit until DADS determines that the reason for suspension no longer exists.

(9) If DADS revokes or does not renew a permit, a person may reapply for a permit by complying with the requirements and procedures in this chapter at the time of reapplication.

(A) DADS may refuse to issue a permit if the reason for revocation or nonrenewal continues to exist.

(B) When a permit is revoked or not renewed, a medication aide [permit holder] must immediately return the [license or] permit to DADS.

§95.129. Alternate Licensing Requirements for Military Service.

(a) Fee waiver based on military experience.

(1) DADS waives the combined permit application and examination fee described in §95.109(c)(1)(A) of this chapter (relating to Application Procedures) and §95.128(n)(1)(A) of this chapter (relating to Home Health Medication Aides) and the permit application fee described in §95.125(f)(1) (relating to Requirements for Corrections Medication Aides) for an applicant if DADS receives and approves a request for a waiver of fees from the applicant in accordance with this subsection.

(2) To request a waiver of fees under this subsection, an applicant must submit a written request for a waiver with the applicant's application for a permit submitted to DADS in accordance with this section. The applicant must include with the request:

(A) documentation of the applicant's status as a military service member or military veteran that is acceptable to DADS; and

(B) documentation of the type and dates of the service, training, and education the applicant received and an explanation as to why the applicant's military service, training or education substantially meets all of the requirements for a permit under this chapter.

(3) Documentation of military status that is acceptable to DADS includes:

(A) for status as a military service member, a copy of a current military service order issued to the applicant by the armed forces of the United States, the State of Texas, or another state; and

(B) for status as a military veteran, a copy of a military service discharge order issued to the applicant by the armed forces of the United States, the State of Texas, or another state.

(4) If DADS requests additional documentation, the applicant must submit the requested documentation.

(5) DADS approves a request for a waiver of fees submitted in accordance with this subsection if DADS determines that the applicant is a military service member or a military veteran and the applicant's military service, training, or education substantially meets all of the requirements for licensure under this chapter.

(b) Fee waiver based on reciprocity.

(1) DADS waives the combined permit application and examination fee described in §95.109(c)(1)(A) of this chapter and §95.128(n)(1)(A) of this chapter and the permit application fee described in §95.125(f)(1) of this chapter for an applicant if DADS receives and approves a request for a waiver of fees from the applicant in accordance with this subsection.

(2) To request a waiver of the fee under this subsection, an applicant must include a written request for a waiver of the fee with the applicant's application that is submitted to DADS in accordance with §95.128(h) of this chapter. The applicant must include with the request documentation of the applicant's status as a military service member, military veteran, or military spouse that is acceptable to DADS.

(3) Documentation of military status that is acceptable to DADS includes:

(A) for status as a military service member, a copy of a current military service order issued to the applicant by the armed forces of the United States, the State of Texas, or another state;

(B) for status as a military veteran, a copy of a military service discharge order issued to the applicant by the armed forces of the United States, the State of Texas, or another state; and

(C) for status as a military spouse:

(i) a copy of a marriage certificate issued to the applicant by a state of the United States or a foreign government; and

(ii) a copy of a current military service order issued to the applicant's spouse by the armed forces of the United States, the State of Texas, or another state.

(4) If DADS requests additional documentation, the applicant must submit the requested documentation.

(5) DADS approves a request for a waiver of the fee submitted in accordance with this subsection if DADS determines that:

(A) the applicant holds a license, registration, certificate, or permit as a medication aide in good standing in another jurisdiction with licensing requirements substantially equivalent to or that exceed the requirements for a permit under this chapter; and

(B) the applicant is a military service member, a military veteran, or a military spouse.

(c) Additional time for permit renewal.

(1) DADS gives a medication aide an additional two years to complete the permit renewal requirements described in §95.115 of this chapter (relating to Permit Renewal), if DADS receives and approves a request for additional time to complete the permit renewal requirements from a medication aide in accordance with this subsection.

(2) To request additional time to complete permit renewal requirements, a medication aide must submit a written request for additional time to DADS before the expiration date of the medication aide's permit. The medication aide must include with the request documentation of the medication aide's status as a military service member that is acceptable to DADS. Documentation as a military service member that is acceptable to DADS includes a copy of a current military service order issued to the medication aide by the armed forces of the United States, the State of Texas, or another state.

(3) If DADS requests additional documentation, the medication aide must submit the requested documentation.

(4) DADS approves a request for two additional years to complete permit renewal requirements submitted in accordance with this subsection if DADS determines that the medication aide is a military service member, except DADS does not approve a request if DADS granted the medication aide a previous extension and the medication aide has not completed the permit renewal requirements during the two-year extension period.

(5) If a medication aide does not submit the written request described by paragraph (2) of this subsection before the expiration date of the medication aide's permit, DADS will consider a request after the expiration date of the permit if the medication aide establishes to the satisfaction of DADS that the request was not submitted before the expiration date of the medication aide's permit because the medication aide was serving as military service member at the time the request was due.

(d) Renewal of expired permit.

(1) DADS renews an expired permit if DADS receives and approves a request for renewal from a former medication aide in accordance with this subsection.

(2) To request renewal of an expired permit, a former medication aide must submit a written request with a permit renewal application within five years after the former medication aide's permit expired. The former medication aide must include with the request documentation of the former medication aide's status as a military service member, military veteran, or military spouse that is acceptable to DADS.

(3) Documentation of military status that is acceptable to DADS includes:

(A) for status as a military service member, a copy of a current military service order issued to the former medication aide by the armed forces of the United States, the State of Texas, or another state;

(B) for status as a military veteran, a copy of a military service discharge order issued to the former medication aide by the armed forces of the United States, the State of Texas, or another state; and

(C) for status as a military spouse:

(i) a copy of a marriage certificate issued to the former medication aide by a state of the United States or a foreign government; and

(ii) a copy of a current military service order issued to the former medication aide's spouse by the armed forces of the United States, the State of Texas, or another state.

(4) If DADS requests additional documentation, the former medication aide must submit the requested documentation.

(5) DADS approves a request for renewal of an expired permit submitted in accordance with this subsection if DADS determines that:

(A) the former medication aide is a military service member, military veteran, or military spouse;

(B) the former medication aide has not committed an offense listed in Texas Health and Safety Code §250.006(a) and has not committed an offense listed in Texas Health and Safety Code §250.006(b) during the five years before the date the former medication aide submitted the initial permit application;

(C) the former medication aide is not listed on the EMR;  
and

(D) the former medication aide is not listed on the NAR.

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

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Department of Aging and Disability Services

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For further information, please call: (512) 438-4836

