

ADOPTED RULES

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

TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 59. CONTINUING EDUCATION REQUIREMENTS

16 TAC §§59.3, 59.10, 59.20, 59.21, 59.30, 59.51, 59.80 59.90

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 59, §§59.10, 59.20, 59.21, 59.30, 59.51, 59.80 and 59.90, regarding the Continuing Education Requirements, without changes to the proposed text as published in the May 27, 2016, issue of the *Texas Register* (41 TexReg 3804). The rules will not be republished.

The Commission also adopts amendments to an existing rule at 16 TAC, Chapter 59, §59.3, with changes to the proposed text as published in May 27, 2016, issue of the *Texas Register* (41 TexReg 3804). The rules will be republished.

The adopted amendments update the continuing education requirements for the different professions regulated by the Texas Department of Licensing and Regulation (Department) and general language clean up. The adopted amendments are necessary to allow the Department to streamline continuing education requirements across several professions. The adopted amendments also provide the Department with better enforcement tools to hold the continuing education providers accountable to the consumers they serve.

The adopted amendments to §59.3 add "booting operators" and "elevator contractor responsible party and registered elevator inspector" to the occupations which are required to take continuing education. Also, licensed court interpreters was removed from the listed professions since the Department no longer has regulatory authority over the profession.

The adopted amendments to §59.10 add "current on the payment" to the definitions and clarifies the definition of continuing education provider. Editorial changes are made to renumber the section.

The adopted amendments to §59.20 removes the requirement for a separate provider registration per occupation and adds the requirement for the provider to be current on all fees.

The adopted amendments to §59.21 adds the requirement for providers seeking renewal to be current on all fees.

The adopted amendments to §59.30 allows the Department to approve courses in increments of less than one hour and prevents the Department from approving a continuing education course from a provider that is not current on required fees.

The adopted amendments §59.51 requires the course completion report to include the total amount of continuing education record fees owed to the Department, if any. The proposed amendments also require the provider to pay all required fees and prohibits the provider from enrolling a participant into a continuing education course without Department approval if fees are owed.

The adopted amendments to §59.80 adds a record fee and clean up expired language.

The adopted amendments to §59.90 allows the Department to seek an administrative sanction against a person for failing to pay the Department all required fees, including record fees, or administrative penalties and allows the Executive Director to probate a license.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the May 27, 2016, issue of the *Texas Register* (41 TexReg 3804). The deadline for public comments was June 27, 2016. The Department received comments from twelve interested parties on the proposed rules during the 30-day public comment period.

Comment--One commenter does not agree with barbers being required to take continuing education.

Department Response--Under Texas Occupations Code, Chapter 1601 and 1603, Barbers are not required to take continuing education and have not been added to these proposed rules. The Department did not make any changes to the proposed rules as a result of this comment.

Comment--One commenter would like to keep the four hours of continuing education for driver education and safety school owners and would also like to have the Department hold continuing education classes alongside the Texas Department of Public Safety.

Department Response--Continuing education for the Driver Education and Safety program is administered differently by the Department and it is governed by the Education Code, Chapter 1001 and 16 TAC, Chapter 84. The Department did not make any changes to the proposed rules as a result of this comment.

Comment--One commenter described their work experience and wanted to know if the experience could count as continuing education for the renewal of their Cosmetology license.

Department Response--The comment was forwarded to the Department's licensing division for response. The Department did not make any changes to the proposed rules as a result of this comment.

Comment--One commenter suggested eliminating the online continuing education course; making the course sixteen hours;

and having the Department conduct the course for the air conditioning and refrigeration license.

Department Response--Online courses provide licensees with more flexibility and options to complete continuing education requirements. The number of continuing education hours required for an air conditioning and refrigeration license is set forth in the air conditioning and refrigeration contractors rules in 16 TAC, Chapter 75 and not addressed by these proposed amendments. In addition, the Department does not conduct courses as to not impede upon provider business practices and the Department would be in direct competition with the industries. The Department did not make any changes to the proposed rules as a result of this comment.

Comment--One commenter thinks the continuing education provider system is unfair because of lack of competition. The commenter suggested the Department assign the provider to the licensee renewal.

Department Response--The Department posts a list of all registered continuing education providers for each program on the Department's official website. The information is accessible to everyone and allows consumers to choose their preferred provider instead of having the Department assign providers to the licensees. The Department did not make any changes to the proposed rules as a result of this comment.

Comment--One commenter does not agree with the continuing education fees.

Department Response--On November 21, 2013, the Texas Commission on Licensing and Regulation approved a reduction in applications fees for Continuing Education Providers. The fee for initial and renewal applications were reduced from \$250 to \$200, effective March 1, 2014. Additionally, the proposed changes would no longer require providers to pay registration fees per occupation. The Department strives to set fees that are reasonable and necessary only to cover the costs of administering the programs. The Department did not make any changes to the proposed rules as a result of this comment.

Comment--One commenter recommended having the Police Departments and Fire Departments attend training with tow truck operators.

Department Response--The Department has no authority over training requirements for Police Departments and Fire Departments. The Department did not make any changes to the proposed rules as a result of this comment.

Comment--One commenter is disappointed by the lack of interest the Tow industry shows toward continuing education and the lack of enforcement regarding provider fee collections.

Department Response--The proposed amendments seek to provide the Department with better enforcement tools to hold continuing education providers accountable to the consumers. The Department did not make any changes to the proposed rules as a result of this comment.

Comment--One commenter wanted to know how this rule change would affect the Property Tax Professionals, specifically: will CE providers be required to pay a registration fee and if this inclusion will conflict with the property tax professional statute.

Department Response--Continuing education for the Property Tax Professionals program is uniquely administered by the Department with the assistance of the Texas Comptroller of Public Accounts as required by the Texas Occupations Code, Chap-

ter 1151. The Texas Comptroller of Public Accounts has raised concerns that addition of the Property Tax Professionals to 16 TAC Chapter 59 may cause confusion. The Department does not foresee any conflict with the inclusion of the Property Tax Professionals Program as proposed; however, to eliminate the confusion regarding continuing education requirements the Department has removed the property tax professionals program from §59.3 and will work with the Texas Comptroller of Public Accounts to address concerns.

Comment--One commenter would like the costs for opening a new driver training school reduced and better enforcement to eliminate corruption.

Department Response--The Department strives to set fees that are reasonable and necessary only to cover the costs of administering the programs. Additionally, the proposed amendments seek to update the continuing education requirements for specifically listed professions regulated by the Department. Driver Education and Safety was not included because it is administered differently by the Department and governed by Education Code, Chapter 1001 and 16 TAC, Chapter 84. The Department did not make any changes to the proposed rules as a result of this comment.

Comment--Three comments expressed concern about implementing the 'record fee' for the property tax professionals program and believes it will force continuing education providers out of the business. In addition, one of the comments would also like stricter continuing education classes to prevent fraud.

Department Response--The 'record fee' is statutorily required by the Cosmetology and Tow Operators programs and does not apply to the Property Tax Professionals program. Furthermore, the proposed amendments seek to provide the Department with better enforcement tools to hold continuing education providers accountable to the consumers. The Department did not make any changes to the proposed rules as a result of this comment.

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

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

§59.3. Purpose and Applicability.

These rules are promulgated to establish continuing education provider and course requirements for the following occupations regulated by the Department of Licensing and Regulation:

(1) Air conditioning and refrigeration contractors, as provided by Texas Occupations Code, Chapter 1302. Additional continuing education requirements relating to air conditioning and refrigeration contractors may be found in Chapter 75 of this title.

(2) Auctioneers, as provided by Texas Occupations Code, Chapter 1802. Additional continuing education requirements relating to auctioneers may be found in Chapter 67 of this title.

(3) Booting operators, as provided by Texas Occupations Code, Chapter 2308. Additional continuing education requirement relating to booting may be found in Chapter 89 of this title.

(4) Cosmetologists, as provided by Texas Occupations Code, Chapters 1602 and 1603. Additional continuing education

requirements relating to cosmetologists may be found in Chapter 83 of this title.

(5) Electricians, as provided by Texas Occupations Code, Chapter 1305. Additional continuing education requirements relating to electricians may be found in Chapter 73 of this title.

(6) Elevator contractor responsible party and registered elevator inspector, as provided by Texas Health and Safety Code, Chapter 754, Subchapter B. Additional continuing education requirements relating to responsible parties may be found in Chapter 74 of this title.

(7) Polygraph examiners, as provided by Texas Occupations Code, Chapter 1703. Additional continuing education requirements relating to polygraph examiners may be found in Chapter 88 of this title.

(8) Property tax consultants, as provided by Texas Occupations Code, Chapter 1152. Additional continuing education requirements relating to property tax consultants may be found in Chapter 66 of this title.

(9) Registered accessibility specialists, as provided by Texas Government Code, Chapter 469. Additional continuing education requirements relating to registered accessibility specialists may be found in Chapter 68 of this title.

(10) Towing operators, as provided by Texas Occupations Code, Chapter 2308. Additional continuing education requirements relating to towing operators may be found in Chapter 86 of this title.

(11) Water well drillers and pump installers, as provided by Texas Occupations Code, Chapters 1901 and 1902. Additional continuing education requirements relating to water well drillers and pump installers may be found in Chapter 76 of this title.

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

Filed with the Office of the Secretary of State on September 2, 2016.

TRD-201604622

Brian E. Francis

Executive Director

Texas Department of Licensing and Regulation

Effective date: October 1, 2016

Proposal publication date: May 27, 2016

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



CHAPTER 70. INDUSTRIALIZED HOUSING AND BUILDINGS

16 TAC §70.30

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Administrative Code (TAC), Chapter 70, §70.30, regarding the Industrialized Housing and Buildings Program, without changes to the proposed text as published in the June 10, 2016, issue of the *Texas Register* (41 TexReg 4150), the rules will not be republished.

Senate Bill 1264 (S.B. 1264), 84th Legislature, Regular Session (2015), which amended the Occupations Code, Chapter 1202, to change a size limitation affecting the regulation of industrialized

housing and buildings. The adopted amendment is necessary to reflect the change in law made by S.B. 1264, which took effect September 1, 2015.

The adopted amendment to §70.30 expands the applicability of the industrialized housing and buildings rules to include structures up to four stories or 60 feet in height from the previous limitation of three or 49 feet in height.

The Department drafted and distributed the proposed rules to person internal and external to the agency. The proposed rules were published in the June 10, 2016, issue of the *Texas Register* (41 TexReg 4150). The deadline for public comment was July 11, 2016. During the 30-day public comment period, the Department did not receive any comments.

The amendment is adopted under Texas Occupations Code, Chapter 1202, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement these rules, chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set for in Texas Occupations Code, Chapter 1202. No other statutes, articles, or codes are affected by the adoption.

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

Filed with the Office of the Secretary of State on September 2, 2016.

TRD-201604617

Brian E. Francis

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Effective date: October 1, 2016

Proposal publication date: June 10, 2016

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 6. ICF/ID PROGRAMS-- CONTRACTING

SUBCHAPTER H. DENTAL PROGRAM

40 TAC §§6.351, 6.352, 6.357, 6.370

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), the repeal of Subchapter H, Dental Program, consisting of §§6.351, 6.352, 6.357, and 6.370 in Chapter 6, ICF/ID Programs--Contracting, without changes to the proposal as published in the July 8, 2016, issue of the *Texas Register* (41 TexReg 4997).

The repeal is adopted because DADS has no responsibility for administering dental benefits for individuals enrolled in the Intermediate Care Facilities for Individuals with an Intellectual Disabil-

ity and Related Conditions (ICF/IID) Program; therefore, these rules are not needed.

DADS received no comments regarding adoption of the repeal.

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

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

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

TRD-201604576

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Effective date: September 19, 2016

Proposal publication date: July 8, 2016

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CHAPTER 9. INTELLECTUAL DISABILITY SERVICES--MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES

SUBCHAPTER G. MEDICAID FAIR HEARINGS

40 TAC §9.301

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), the repeal of Subchapter G, Medicaid Fair Hearings, consisting of §9.301 in Chapter 9, Intellectual Disability Services--Medicaid State Operating Agency Responsibilities, without changes to the proposal as published in the July 8, 2016, issue of the *Texas Register* (41 TexReg 5000).

The repeal is adopted to remove rules from the DADS rule base because Medicaid fair hearings are addressed in HHSC rule at 1 TAC Chapter 357, Subchapter A, Uniform Fair Hearing Rules.

DADS received no comments regarding adoption of the repeal.

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability

Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

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

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

TRD-201604577

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Effective date: September 19, 2016

Proposal publication date: July 8, 2016

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CHAPTER 39. COMMUNITY ALZHEIMER'S RESOURCES AND EDUCATION (CARE) PROGRAM

40 TAC §§39.1, 39.2, 39.4, 39.6, 39.8, 39.10, 39.12, 39.14, 39.16

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), the repeal of §§39.1, 39.2, 39.4, 39.6, 39.8, 39.10, 39.12, 39.14, and 39.16, in Chapter 39, Community Alzheimer's Resources and Education (CARE) Program, without changes to the proposal as published in the July 8, 2016, issue of the *Texas Register* (41 TexReg 5014).

The repeal is adopted to remove rules governing a program that is no longer being administered and, therefore, are not needed.

DADS received no comments regarding adoption of the repeal.

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

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

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

TRD-201604578

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Effective date: September 19, 2016

Proposal publication date: July 8, 2016

For further information, please call: (512) 438-2430



CHAPTER 92. LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), new §92.21, in Subchapter B, Application Procedures; an amendment to §92.64, in Subchapter D, Facility Construction; and an amendment to §92.551, in Subchapter H, Enforcement in Chapter 92, Licensing Standards for Assisted Living Facilities. New §92.21 is adopted with changes to the proposed text published in the April 22, 2016, issue of the *Texas Register* (41 TexReg 2873). The amendments to §92.64 and §92.551 are adopted without changes to the proposed text.

The amendments and new section are adopted to implement Texas Health and Safety Code (THSC) §247.022, as amended by House Bill (H.B.) 1769, 84th Legislature, Regular Session, 2015. Texas Health and Safety Code §247.022(d) allows an assisted living facility (facility) license applicant in good standing to request that DADS issue an initial license that does not require an on-site health inspection. Texas Health and Safety Code §247.022(d) also prohibits DADS from requiring an applicant in good standing that requests an initial license to admit a resident to the facility before DADS issues an initial license. The criteria for being in good standing are listed in THSC §247.022(f). Texas Health and Safety Code §247.022 requires a license applicant in good standing to submit for DADS approval the applicant's policies and procedures, verification of employee background checks, and employee credentials before DADS issues an initial license. Texas Health and Safety Code §247.022 requires a facility that is issued an initial license in accordance with THSC §247.022(d) to disclose to residents and prospective residents that the facility has not yet met the requirements of an on-site health inspection. Texas Health and Safety Code §247.022 requires DADS to conduct an on-site health inspection within 90 days after DADS issues an initial license. The adoption sets forth the requirements for an applicant in good standing to obtain an initial license, allows a facility to admit more than three residents after it receives an initial license, and allows DADS to impose an administrative penalty if a facility does not disclose to residents and prospective residents that it has not met the requirements of an on-site health inspection.

DADS made changes to the text of §92.21(c)(2)(A) to clarify that the provision relates to a violation of a licensing rule, and to clarify that, in determining if an applicant is in good standing, a cited violation that the facility challenges will be considered only if the violation was affirmed or a final determination on it is pending.

DADS received written comments from the State Long Term Care Ombudsman and the staff ombudsman with The University of Texas Health Science Center in Houston on the proposed rules. A summary of the comments and the responses follows.

Comment: A commenter recommended the addition of a requirement for a facility that obtains a license before a health inspection to notify the State Long-Term Care Ombudsman within five business days of receiving the license.

Response: The agency will include the practice in its operational procedures and notify the State Long-Term Care Ombudsman within five business days after issuing a license to an applicant in good standing. No changes were made in response to the comment.

Comment: A commenter expressed concerns regarding initial licensure applicants who meet the criteria for good standing in

proposed §92.21 and who apply for an Alzheimer's certification simultaneously. The commenter stated the rule does not address how Alzheimer's certification should be treated if a facility receives a license without an initial health inspection. The commenter recommended that DADS not issue Alzheimer's certification to a facility until the agency conducts a health inspection of the facility and the applicant meets the requirements for licensure because of the vulnerable nature of potential residents.

Response: The rule project implements legislation regarding initial licensure of Type A and Type B facilities. The agency will consider Alzheimer's certification for applicants in good standing in the future. No changes were made in response to the comment.

Comment: A commenter noted "actual harm" is not defined in Chapter 92 and recommended creating a definition that correlates with current and future violations.

Response: The agency defines actual harm in proposed §92.21(c)(2)(A)(i)(I) as a negative outcome that compromises the resident's physical, mental, or emotional well-being. The agency will train surveyors to help ensure that actual harm is recognized and enforced consistently across all regions, and will develop a process to track instances of actual harm. No changes were made in response to the comment.

Comment: A commenter recommended that licensure applicants who operate facilities in other states should also be required to meet the good standing requirements.

Response: Texas Health and Safety Code §247.022(f), as amended by H.B. 1769, applies to a license applicant or a controlling person of a license applicant that has, in addition to other criteria, operated or been the controlling person of a facility in Texas for at least six consecutive years. An applicant that has operated a facility in another state does not meet this statutory requirement. No changes were made in response to the comment.

Comment: A commenter suggested that, although the proposed amendment to §92.21(g) requires a facility to attach an addendum to the disclosure statement to notify all residents and prospective residents that the facility has not met the requirements of the initial on-site health inspection, the disclosure statement itself should include information explaining that the facility has not met the requirements of an initial health inspection.

Response: The agency added to §92.21(g) the minimum information a facility must include on an addendum. The agency chose to require an addendum explaining that the facility has not met the requirements of an initial health inspection, rather than require a facility to change the actual disclosure form, because this is a temporary status for the facility.

Comment: A commenter recommended a requirement for a facility that has not had an on-site health inspection to disclose that status on the Long Term Care Quality Reporting System (QRS) Provider Report.

Response: The purpose of QRS is to provide the results of a facility's most recent survey and to document violations of licensing rules. The results of an initial health survey are available to the public on the DADS website after DADS conducts the survey. No changes were made in response to the comment.

Comment: A commenter suggested a requirement for all facilities to display a disclosure statement in view of potential long-

term care stakeholders or customers until a health inspection is completed.

Response: Staff at a facility must explain and provide a copy of the disclosure statement to an individual, family or responsible party before admitting the individual to the facility. Notification that the facility has not met the requirements of an on-site health inspection must be on an addendum attached to the disclosure statement until the facility meets those requirements. Because §92.21 applies only to an initial license, all individuals who are admitted to the facility will receive the disclosure statement with the addendum. The agency believes that this notification is sufficient and, therefore, requiring a facility to display a disclosure statement is unnecessary. No changes were made in response to the comment.

SUBCHAPTER B. APPLICATION PROCEDURES

40 TAC §92.21

The new section is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS, and Texas Health and Safety Code §247.025 which provides that the HHSC executive commissioner shall adopt rules necessary for licensing assisted living facilities.

§92.21. Initial License for a Type A or Type B Facility for an Applicant in Good Standing.

(a) An applicant may request that DADS issue, before conducting an on-site health inspection, an initial license for a Type A or Type B facility. The applicant must request the license by submitting a form prescribed by and made available from DADS.

(b) If an applicant makes a request in accordance with subsection (a) of this section, DADS determines the applicant is in good standing, and the applicant complies with subsection (d) of this section, the applicant is not required to admit a resident to the facility or have the on-site health inspection described in §92.14(f) of this subchapter (relating to Initial License Application Process and Requirements) before DADS issues an initial license.

(c) For purposes of this section, an applicant is in good standing if:

(1) one of the following conditions is met:

(A) the applicant has operated or been a controlling person of a licensed Type A or Type B facility in Texas for at least six consecutive years; or

(B) the applicant has not held a license for a Type A or Type B facility, but a controlling person of the applicant has operated or been a controlling person of a licensed Type A or Type B facility in Texas for at least six consecutive years; and

(2) each licensed facility operated by the applicant or the controlling person described in paragraph (1)(A) or (B) of this subsection:

(A) has not had a violation of a licensing rule:

(i) that:

(I) resulted in actual harm to a resident, which is defined as a negative outcome that compromises the resident's physical, mental or emotional well-being; or

(II) posed an immediate threat of harm causing or likely to cause serious injury, impairment, or death to a resident; and

(ii) that:

(I) the facility did not challenge;

(II) was affirmed; or

(III) is pending a final determination; and

(B) has not had a sanction imposed by DADS against the facility during the six years before the date an application is submitted that resulted in:

(i) a civil penalty;

(ii) an administrative penalty;

(iii) an injunction;

(iv) the denial, suspension, or revocation of a license; or

(v) an emergency closure.

(d) An applicant that makes a request in accordance with subsection (a) of this section must:

(1) submit to DADS:

(A) the applicant's policies and procedures;

(B) evidence that the applicant has complied with §92.123 of this chapter (relating to Investigation of Facility Employees); and

(C) documentation that the applicant's employees have the credentials described in §92.41(a) of this chapter (relating to Standards for Type A and Type B Assisted Living Facilities); and

(2) comply with §92.14(d) of this subchapter and §92.11(c)(1)(A) - (C) of this subchapter (relating to Criteria for Licensing).

(e) DADS issues an initial license to an applicant that makes a request in accordance with subsection (a) of this section if DADS determines that an applicant:

(1) is in good standing;

(2) has submitted information in accordance with subsection (d)(1) of this section that complies with this chapter; and

(3) is in compliance with the requirements of Subchapter D of this chapter (relating to Facility Construction), including meeting the requirements of a Life Safety Code (LSC) inspection within 120 days after the date DADS conducts the initial LSC inspection.

(f) DADS conducts an on-site health inspection within 90 days after the date DADS issues a license in accordance with subsection (e) of this section. The on-site health inspection includes DADS observation of the facility's provision of care to at least one resident.

(g) Until a facility that is issued an initial license under this section meets the requirements of the on-site health inspection described in subsection (f) of this section, the facility must attach a written addendum to the disclosure statement required by §92.41(d)(1) of this chapter as notice to a resident or a prospective resident that the facility has not met the requirements of the on-site health inspection. At a minimum, the addendum must state that:

(1) the facility has not met the requirements of an initial on-site health inspection for a license; and

(2) DADS will conduct an on-site health inspection for licensure within 90 days after the date the license is issued.

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

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

TRD-201604573

Lawrence Hornsby
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Effective date: September 19, 2016

Proposal publication date: April 22, 2016

For further information, please call: (512) 438-2235



SUBCHAPTER D. FACILITY CONSTRUCTION

40 TAC §92.64

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS, and Texas Health and Safety Code §247.025 which provides that the HHSC executive commissioner shall adopt rules necessary for licensing assisted living facilities.

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

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

TRD-201604574

Lawrence Hornsby

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Effective date: September 19, 2016

Proposal publication date: April 22, 2016

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SUBCHAPTER H. ENFORCEMENT

DIVISION 9. ADMINISTRATIVE PENALTIES

40 TAC §92.551

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS, and Texas Health and Safety Code §247.025 which provides that the HHSC executive commissioner shall adopt rules necessary for licensing assisted living facilities.

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

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

TRD-201604575

Lawrence Hornsby

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Department of Aging and Disability Services

Effective date: September 19, 2016

Proposal publication date: April 22, 2016

For further information, please call: (512) 438-2235

