

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 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 27. RULES FOR ADMINISTRATIVE SERVICES

SUBCHAPTER E. ENHANCED CONTRACT MONITORING

16 TAC §27.170

The Public Utility Commission of Texas (commission) adopts new Subchapter E, Enhanced Contract Monitoring, §27.170, relating to Enhanced Contract Monitoring Procedure without changes to the proposed text as published in the April 8, 2016, issue of the *Texas Register* (41 TexReg 2557). The adopted new section will establish a procedure identifying contracts that require enhanced contract monitoring pursuant to Texas Government Code §2261.253, which was added by Senate Bill 20 (84th Leg). Project Number 45273 is assigned to this proceeding.

A public hearing on the new Subchapter E. Enhanced Contract Monitoring, §27.170, relating to Enhanced Contract Monitoring Procedure was not requested.

The commission did not receive any comments on the proposed new section.

The new section is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (West 2007 and Supp. 2016) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §14.052.

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 23, 2016.

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Adriana Gonzales

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Public Utility Commission of Texas

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PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 33. LICENSING

SUBCHAPTER A. APPLICATION PROCEDURES

16 TAC §33.9

The Texas Alcoholic Beverage Commission adopts amendments to §33.9, relating to Fees for On-Line Transaction, without changes to the proposed text as published in the August 12, 2016, issue of the *Texas Register* (41 TexReg 5865).

Section 33.9 sets the fees that the commission charges for online transactions. The rule was amended effective April 17, 2016, to reflect the fees required at that time to process online transactions utilizing the Texas.Gov portal. Since that time, the commission has been informed that the fees for utilizing Texas.Gov portal are being changed by the Texas Department of Information Resources. The commission wants to encourage the use of online resources for filings. The commission also recognizes that the fees associated with the use of these resources are subject to change.

Therefore, the commission amends the section to delete the specific amount of the charges and instead to simply reflect that the amount of the fees charged for using the Texas.Gov portal are set by the Texas Department of Information Resources.

No comments were received.

The amendments are adopted pursuant to Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and §5.55, which grants authority to charge reasonable service fees for the use of electronic or internet service to apply for licenses, permits or certificates.

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

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CHAPTER 41. AUDITING

SUBCHAPTER C. RECORDS AND REPORTS BY LICENSEES AND PERMITTEES

16 TAC §41.32

The Texas Alcoholic Beverage Commission adopts amendments to §41.32, Monthly Report of Distilled Spirits, Wines, Ale and Malt Liquor, and Beer, without changes to the proposed text as published in the August 12, 2016, issue of the *Texas Register* (41 TexReg 5866).

Section 41.32 addresses the requirement that holders of distiller's, rectifier's, wholesaler's, general and local Class B wholesaler's, Class A and B winery, or wine bottler's permits must make a monthly report (monthly report of distilled spirits and wines received and disposed of) to the commission. The rule sets forth the information required in the report.

The commission reviewed the section pursuant to Government Code §2001.039 and determined that the need for a rule addressing this reporting requirement continues to exist but that some changes to the rule are appropriate.

In separate rulemaking proceedings ongoing simultaneously with the amendment of this section, the commission is repealing other rules addressing reporting requirements for other types of license and permit holders. Subsection (a) is amended to include those license and permit holders under this rule.

Subsection (a) is also amended to authorize the executive director (or the executive director's designee) to approve the use of other forms to make the required reports, in addition to the forms prescribed by the commission.

Subsection (b) is amended to delete the specific information to be provided in the monthly report of distilled spirits and wines received and disposed of. This allows the commission to make necessary changes to the forms without having to amend the rule each time a change is required. The forms are developed and changed after consultation with affected industry members and other commission stakeholders.

Removing the specific list of information required to be on the forms also allows the consolidation of reporting requirements in §41.32, in conjunction with the repeal of §§41.33, 41.34 and 41.36 that the commission is adopting in separate but simultaneous rulemaking proceedings.

New subsection (c) describes invoice requirements and clarifies that the commission may require that invoices be submitted to support entries in the monthly reports.

New subsection (d) clarifies that the required monthly reports must be filed each month even if no sales or shipments have been made.

No comments were received.

The amendments are adopted pursuant to Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

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

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16 TAC §41.33

The Texas Alcoholic Beverage Commission adopts the repeal of §41.33, relating to Receiving Record of Distilled Spirits and Wine, without changes to the proposed repeal as published in the August 12, 2016, issue of the *Texas Register* (41 TexReg 5867).

Section 41.33 addresses the requirement that holders of rectifier's, wholesaler's, general and local Class B wholesaler's, Class A and B winery, and wine bottler's permits must make a monthly report (receiving record of distilled spirits and wines) to the commission. The rule sets forth the information required in the report and requires that entries must be made on the report within 24 hours after the day any such distilled spirits and wines are received or become the property of the permittee at any point within the State of Texas.

The commission has reviewed the section pursuant to Government Code §2001.039 and has determined that the need for a rule addressing this reporting requirement continues to exist but that it is more appropriately addressed elsewhere. Therefore, the commission repeals the text of this section. The reporting requirement is now reflected in an amended version of §41.32, relating to Monthly Report of Distilled Spirits, Wines, Ale and Malt Liquor, and Beer. The commission is amending §41.32 in a separate and simultaneous rulemaking.

No comments were received.

The repeal is adopted pursuant to Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

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

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16 TAC §41.34

The Texas Alcoholic Beverage Commission adopts the repeal of §41.34, relating to Distilled Spirits Reports of Miniatures, without changes to the proposed text as published in the August 12, 2016, issue of the *Texas Register* (41 TexReg 5867).

Section 41.34 addresses the requirement that holders of distiller's, rectifier's or wholesaler's permits must make a monthly report (distilled spirits report of miniatures) to the commission. The rule sets forth the information required in the report.

The commission has reviewed the section pursuant to Government Code §2001.039 and has determined that the need for a rule addressing this reporting requirement continues to exist but that it is more appropriately addressed elsewhere. Therefore, the commission repeals the text of this section. The reporting requirement is now reflected in an amended version of §41.32, relating to Monthly Report of Distilled Spirits, Wines, Ale and Malt Liquor, and Beer. The commission is amending §41.32 in a separate and simultaneous rulemaking.

No comments were received.

The repeal is adopted pursuant to Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

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

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16 TAC §41.35

The Texas Alcoholic Beverage Commission adopts amendments to §41.35, Bottling Record, without changes to the proposed text as published in the August 12, 2016, issue of the *Texas Register* (41 TexReg 5868).

The previous version of §41.35 required the holders of rectifier's, Class A and Class B winery or wine bottler's permits, or any person engaged in the bottling of wine, to make a monthly report (daily bottling report) to the commission. The commission reviewed the section pursuant to Government Code §2001.039 and determined that the need for a rule addressing the information in this report continues to exist but that changes to the rule were appropriate.

The commission amends subsection (a) of §41.35 to include holders of distiller's and rectifier's permits, winery permits, wine bottler's permits, brewer's permits, manufacturing licenses, or brewpub licenses under this rule.

The commission further amends subsection (a) to eliminate the requirement that the required information be submitted in a monthly report and to instead require that the information be maintained as a record to be made available to the commission upon request.

Subsection (b) is amended to specify the information to be recorded and to change the units to be recorded to reflect that other producers in addition to wineries would now be subject to the recordkeeping requirements.

The physical inventory requirements in previous subsections (c) and (e) are deleted.

Previous subsection (d) required entries to be made on the report within 48 hours after the day wine is received or bottled. In new subsection (c), the commission allows entries to be made on the record up to three days after beer or liquor is received or bottled. This allows more flexibility but still requires that entries be made close to the time recordable events occur in the interest of accuracy and so that they will not be lost to memory.

New subsection (d) continues the requirements regarding wine manufactured and labelled for individuals that were in the previous version of the rule.

No comments were received.

The amendments are adopted pursuant to Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

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

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16 TAC §41.36

The Texas Alcoholic Beverage Commission adopts the repeal of §41.36, relating to Monthly Report of Ale and Malt Liquor, without changes to the proposed text as published in the August 12, 2016, issue of the *Texas Register* (41 TexReg 5869).

Section 41.36 addresses the requirement that holders of brewer's, wholesaler's, general Class B wholesaler's or local Class B wholesaler's permits must make a monthly report (monthly report of ale and malt liquor manufactured, imported, purchased, and disposed of) to the commission. The rule sets forth the information required in the report.

The commission has reviewed the section pursuant to Government Code §2001.039 and has determined that the need for a

rule addressing this reporting requirement continues to exist but that it is more appropriately addressed elsewhere. Therefore, the commission repeals the text of this section. The reporting requirement is now reflected in an amended version of §41.32, relating to Monthly Report of Distilled Spirits, Wines, Ale and Malt Liquor, and Beer. The commission is amending §41.32 in a separate and simultaneous rulemaking.

No comments were received.

The repeal is adopted pursuant to Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

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

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16 TAC §41.41

The Texas Alcoholic Beverage Commission adopts amendments to §41.41, relating to Nonresident Seller's Report, without changes to the proposed text as published in the August 12, 2016, issue of the *Texas Register* (41 TexReg 5870).

Section 41.41 addresses the requirement that holders of nonresident seller's permits must make a monthly report to the commission. The commission reviewed the section pursuant to Government Code §2001.039 and determined that the need for a rule addressing this reporting requirement continues to exist but that some changes to the rule are appropriate.

The commission amends subsection (a) to authorize the executive director (or the executive director's designee) to approve the use of other forms to make the required reports, as alternatives to the prescribed form.

The previous version of subsection (b) specifies the information to be provided in the monthly report. The commission amends subsection (b) to delete the specific information requirements. This allows the commission to make necessary changes to the forms without having to amend the rule each time a change is required. The forms are developed and changed after consultation with affected industry members and other commission stakeholders.

New subsection (c) describes invoice requirements and clarifies that the commission may require that invoices be submitted to support entries in the monthly reports.

New subsection (d) continues the requirement that the required monthly reports must be filed each month even if no sales or shipments have been made.

No comments were received.

The amendments are adopted pursuant to Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

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

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16 TAC §41.45

The Texas Alcoholic Beverage Commission adopts amendments to §41.45, Failure to make Reports and Records, without changes to the proposed text as published in the August 12, 2016, issue of the *Texas Register* (41 TexReg 5871).

Previously, §41.45 provided that it was a violation of the commission's rules to: fail to make any required report or record; fail to make an entry in a required report or record at the required time or in the required place or manner; or make a false entry in a required report or record. The commission reviewed the section pursuant to Government Code §2001.039 and determined that the need for the rule continues to exist but that some changes to the rule were appropriate.

The commission recently adopted changes to §41.25(e) of its rules that provide that making a false entry in a required report or record is a violation. Therefore, the commission amends §41.45 to omit the reference to making false entries and to clarify the reports and records to which this section applies. The title is changed to be more descriptive of the rule text.

No comments were received.

The amendments are adopted pursuant to Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

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

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For further information, please call: (512) 206-3489



16 TAC §41.46

The Texas Alcoholic Beverage Commission adopts the repeal of §41.46, relating to Beer--In General, without changes to the proposed text as published in the August 12, 2016, issue of the *Texas Register* (41 TexReg 5871).

Section 41.46 addresses: payments of tax on beer by manufacturers, distributors and importers; distributor's monthly reports; manufacturer's monthly reports; nonresident manufacturer's monthly reports; carrier's monthly reports; and tax refund claims.

The commission has reviewed the section pursuant to Government Code §2001.039 and has determined that the need for a rule addressing these reporting requirements continues to exist but that they are more appropriately addressed elsewhere. Therefore, the commission repeals the text of this section. Some of the reporting requirements are now reflected in an amended version of §41.32, relating to Monthly Report of Distilled Spirits, Wines, Ale and Malt Liquor, and Beer.

The commission is amending §41.32 in a separate and simultaneous rulemaking. The reporting requirements for nonresident manufacturers are now addressed in a new version of §41.46, relating to Nonresident Manufacturer's Report, that the commission is adopting in a separate and simultaneous rulemaking proceeding.

No comments were received.

The repeal is adopted pursuant to Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

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

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Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3489



16 TAC §41.46

The Texas Alcoholic Beverage Commission adopts new §41.46, relating to Nonresident Manufacturer's Report, without changes to the proposed text as published in the August 12, 2016, issue of the *Texas Register* (41 TexReg 5872).

New §41.46, relating to Nonresident Manufacturer's Report, continues but modifies the requirement in previous §41.46, relating to Beer--In General, that holders of nonresident manufacturer's permits must make a monthly report to the commission. In a separate and simultaneous rulemaking proceeding, the commission is repealing §41.46, relating to Beer--In General.

Subsection (a) of the new rule requires a report to be filed by holders of nonresident manufacturer's licenses on forms prescribed or approved by the executive director or the executive director's designee.

Subsection (b) requires the report to be electronically submitted or postmarked on or before the 15th day of the month following the calendar month for which the report is made. The report is to be filed with the commission at its Austin headquarters office.

Subsection (c) describes invoice requirements and provides that the commission may require invoices be submitted to support entries in the monthly reports.

Subsection (d) requires that the reports must be filed each month, even if no sales or shipments have been made.

No comments were received.

The new rule is being adopted pursuant to Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

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

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For further information, please call: (512) 206-3489



16 TAC §41.53

The Texas Alcoholic Beverage Commission adopts amendments to §41.53, Required Records for Brewpubs, without changes to the proposed text as published in the August 12, 2016, issue of the *Texas Register* (41 TexReg 5872).

Section 41.53 addresses the requirement that holders of brewpub licenses must make a monthly report to the commission. The commission reviewed the section pursuant to Government Code §2001.039 and determined that the need for a rule addressing this reporting requirement continues to exist but that some changes to the rule were appropriate.

The commission amends subsection (a) to authorize the executive director (or the executive director's designee) to approve the use of other forms to make the required reports, as alternatives to the prescribed form.

The commission amends subsection (b) to delete specific information requirements. This allows the commission to make necessary changes to the forms without having to amend the rule each time a change is required. The forms are developed and changed after consultation with affected industry members and other commission stakeholders.

Previous subsection (c), which described the payment of taxes by holders of brewpub licenses, is deleted. New subsection (c) describes invoice requirements and clarifies that the commission may require that invoices be submitted to support entries in the monthly reports.

The commission adds new subsection (d), which requires that the monthly reports must be filed each month even if no sales or shipments have been made.

No comments were received.

The amendments are adopted pursuant to Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

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

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For further information, please call: (512) 206-3489



16 TAC §41.55

The Texas Alcoholic Beverage Commission adopts the repeal of §41.55, relating to Malt Beverages for Export, without changes to the proposed text as published in the August 12, 2016, issue of the *Texas Register* (41 TexReg 5874).

Section 41.55 addresses malt beverages that are illegal for sale in this state because of alcohol content, container size, package or label. The rule requires that distributors and wholesalers who intend to receive, store, transport or deliver such beverages for export to another state must register with the commission prior to such activities taking place. The rule also requires separate invoicing, storage and reporting of such beverages.

The commission has reviewed the section pursuant to Government Code §2001.039 and has determined that the need for a rule addressing malt beverages for export continues to exist.

However, given the extent of required revisions, the commission repeals the text of this section and is replacing it with new text in a new §41.55, with the same title, that is being adopted by the commission in a separate and simultaneous rulemaking proceeding.

No comments were received.

The repeal is adopted pursuant to Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

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

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For further information, please call: (512) 206-3489

16 TAC §41.55

The Texas Alcoholic Beverage Commission adopts new §41.55, relating to Malt Beverages for Export, without changes to the proposed text as published in the August 12, 2016, issue of the *Texas Register* (41 TexReg 5874).

New §41.55 addresses the obligations of distributors and wholesalers who are dealing with malt beverages that are not legal for sale to a Texas retailer because of alcohol content, container size, package or label. Subsection (b) provides that distributors and wholesalers who wish to receive, store, transport, or deliver such beverages for export to another state must store and invoice them separately, and maintain the invoices for four years.

In a separate and simultaneous rulemaking proceeding the commission is repealing the previous version of §41.55, which also required such distributors and wholesalers to register with the commission before engaging in the described activities.

No comments were received.

The new rule is being adopted pursuant to Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

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

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

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For further information, please call: (512) 206-3489



TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.14

Introduction

The Texas Board of Nursing (Board) adopts an amendment to §217.14, concerning Registered Nurses Performing Radiologic Procedures. The amendment is being adopted without changes to the proposed text published in the August 12, 2016, issue of the *Texas Register* (41 TexReg 5905) and will not be republished.

Reasoned Justification

The amendment is proposed under the authority of the Occupations Code §301.151 and Chapter 601, including §601.253(a).

Chapter 601, also known as the Medical Radiologic Technologist Certification Act, was amended during the 84th Legislative Session by Senate Bill (SB) 202. SB 202 transferred regulatory authority over medical radiologic technicians from the Department of State Health Services to the Texas Medical Board. Under SB 202, the Texas Medical Board, in conjunction with the Texas Board of Medical Radiologic Technology (an advisory board to the Texas Medical Board), retains authority to establish training requirements for medical radiologic technologists and other authorized individuals. As a result, the adopted amendment is necessary to reflect this change.

Section by Section Overview

Adopted §217.14 requires registered nurses performing radiologic procedures to comply with the training requirements and limitations established by the Medical Radiologic Technologist Certification Act and the rules of the Texas Medical Board. Additionally, the registered nurse must also comply with the Texas Medical Practice Act, the Texas Pharmacy Act, and any other applicable laws of the State of Texas. Because SB 202 transferred the responsibilities for establishing training requirements to the Texas Medical Board, the adopted amendment is necessary to alert registered nurses performing radiologic procedures to this statutory change so they may comply with the requirements promulgated by the Texas Medical Board. The particular requirements and/or limitations established by the Texas Medical Board will be included in a separate rulemaking procedure, conducted by the Texas Medical Board.

How the Section Will Function

Adopted §217.14(d) requires a registered nurse, whose functions include radiologic procedures, to comply with the training requirements and limitations of the Medical Radiologic Technologist Certification Act and the rules of the Texas Medical Board. Additionally, the subsection requires the registered nurse to be in compliance with the Texas Medical Practice Act, the Texas Pharmacy Act, and any other applicable laws of the State of Texas.

Summary of Comments and Agency Response

The agency did not receive any comments on the proposal.

Statutory Authority

The amendment is adopted under the authority of the Occupations Code §301.151 and Chapter 601.253, including §601.253(a).

Section 301.151 addresses the Board's rulemaking authority. §301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 601.253(a) provides that the Board shall adopt rules governing registered nurses performing radiologic procedures under §601.151 or 601.154, including rules: (1) establishing mandatory training guidelines; and (2) requiring registered nurses performing radiologic procedures under §601.151 to register with the Texas Board of Nursing and to identify the practitioner ordering the procedures.

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 22, 2016.

TRD-201604969

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Effective date: October 12, 2016

Proposal publication date: August 12, 2016

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CHAPTER 223. FEES

22 TAC §223.1

Introduction

The Texas Board of Nursing (Board) adopts amendments to §223.1, concerning Fees. The amendments are being adopted without changes to the proposed text published in the August 12, 2016, issue of the *Texas Register* (41 TexReg 5907) and will not be republished.

Reasoned Justification

The amendments are adopted under the authority of the Occupations Code §301.155. Section 301.155 authorizes the Board, by rule, to establish fees in amounts reasonable and necessary to cover the costs of administering the Occupations Code Chapter 301.

The adopted amendments seek to eliminate several unnecessary and/or outdated fees from the current rule. Currently, Staff must process the collection of these fees, which results in unnecessary delay to the licensee. Because these fees are nominal to begin with, the cost associated with the delay outweighs the benefits the fees may produce. Further, as the Board moves toward a paperless workflow system, license and record verification and duplication of certificates will be available from an online source, making the associated fees unnecessary. Finally, elimination of the fees will only have a minimal effect on the Board's total revenue.

Section by Section Overview

The adopted amendments will eliminate the fees currently required for: (1) duplicate or substitute permanent certificates; (2) issuance of a temporary permit for completing a refresher course, a temporary permit under §301.258, or an accustomation permit; (3) verification of licensure; (4) verification of records; and (5) a request for retired status, e.g., Licensed Vocational Nurse, Retired; Registered Nurse, Retired; Volunteer Retired Vocational Nurse (VR-VN); Volunteer Retired Registered Nurse (VR-RN); Volunteer Retired Registered Nurse (VR-RN) with qualifications in a given advanced practice nurse role and specialty (e.g., VR-RN, FNP). The remaining fees will be retained, and the section will be renumbered/reordered accordingly.

How the Section Will Function

The adopted amendments to §223.1(a)(6), (7), (9), (10), and (15) eliminate fees associated with: (1) duplicate or substitute permanent certificates; (2) temporary permits for completing a refresher course, temporary permits under §301.258, and accustomation permits; (3) verification of licensure; (4) verification of records; and (5) requests for retired status, e.g., Licensed Voca-

tional Nurse, Retired; Registered Nurse, Retired; Volunteer Retired Vocational Nurse (VR-VN); Volunteer Retired Registered Nurse (VR-RN); Volunteer Retired Registered Nurse (VR-RN) with qualifications in a given advanced practice nurse role and specialty (e.g., VR-RN, FNP).

Summary of Comments and Agency Response

The agency did not receive any comments on the proposal.

Statutory Authority

The amendments are adopted under the authority of the Occupations Code §301.151 and §301.155.

Section 301.151 addresses the Board's rulemaking authority. Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.155(a) provides that the Board, by rule, shall establish fees in amounts reasonable and necessary to cover the costs of administering Chapter 301. Further, the Board may not set a fee that existed on September 1, 1993, in an amount less than the amount of that fee on that date.

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 22, 2016.

TRD-201604970

Jena Abel

Assistant General Counsel

Texas Board of Nursing

Effective date: October 12, 2016

Proposal publication date: August 12, 2016

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PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER E. RESPONSIBILITIES TO THE BOARD/PROFESSION

22 TAC §501.91

The Texas State Board of Public Accountancy adopts an amendment to §501.91, concerning Reportable Events, without changes to the proposed text as published in the July 29, 2016, issue of the *Texas Register* (41 TexReg 5496) and will not be republished.

The amendment to §501.91 adds the requirement of a licensee to notify the Board of any voluntary consent decree of the right to practice before any governmental body or agency, state for-

eign country or other jurisdiction and the notification would be required of any limitation on a professional license issued in any state or federal regulatory agency including Texas.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is 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 22, 2016.

TRD-201604967

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: October 12, 2016

Proposal publication date: July 29, 2016

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CHAPTER 505. THE BOARD

22 TAC §505.10

The Texas State Board of Public Accountancy adopts an amendment to §505.10, concerning Board Committees, without changes to the proposed text as published in the July 29, 2016, issue of the *Texas Register* (41 TexReg 5497) and will not be republished.

The amendment to §505.10 streamlines the rule to make it easier to read and understand.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is 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.

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TRD-201604968

J. Randel (Jerry) Hill

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For further information, please call: (512) 305-7842

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 419. MENTAL HEALTH SERVICES--MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES

SUBCHAPTER A. YOUTH EMPOWERMENT SERVICES (YES)

25 TAC §419.7

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts new §419.7, concerning the Youth Empowerment Services (YES) Waiver program with changes to the proposed text as published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3237).

BACKGROUND AND PURPOSE

The department administers the YES Waiver program, which provides comprehensive home and community-based services for children, ages 3 through 18, at risk of institutionalization or out-of-home placement due to their serious emotional disturbance (SED). The current rules in §§419.1 - 419.6 and 419.8 implemented the YES Waiver as a pilot program under the waiver provisions of the federal Social Security Act, §1915(c) in 2009.

New §419.7 will establish a rule for the maintenance of a YES Waiver inquiry list and for the priority population for placement on the YES Waiver inquiry list. The new rule will ensure that interested individuals have timely and fair access to the YES Waiver program and to reduce the number of children with SED relinquished to the conservatorship of the state. The approved YES waiver already requires LMHAs to maintain an updated inquiry list of waiver participants living in the local service area who are seeking services. This new rule will provide guidance on the responsibilities of LMHAs in maintaining their YES Waiver inquiry list. Vacancies are offered to waiver participants on a first come, first served basis according to the chronological date of the waiver participant's registration on the waiver inquiry list.

In 2013, the 83rd Legislature directed the YES Waiver to expand statewide. The Centers for Medicare and Medicaid Services (CMS) has approved an amendment to expand the YES Waiver statewide as a Medicaid program retroactive to September 1, 2015.

In addition, the YES waiver program received approval from CMS July 10, 2016 for an amendment to the waiver, which will bring foster care children into the program and will provide for reserved capacity waiver slots. Two essential elements of the department's operating responsibilities are: 1) managing waiver enrollment through the review of YES Waiver inquiry lists; and 2) monitoring waiver expenditures through the allocation, or reallocation, of waiver slots across the state.

New §419.7 will also reserve a percentage of the total number of YES Waiver vacancies for reserve capacity and will define the population of children who will be considered for a reserve capacity vacancy. Children who are at imminent risk of relinquishment will have priority placement on a YES Waiver inquiry list.

SECTION-BY-SECTION SUMMARY

New §419.7 establishes a rule for the maintenance of the YES Waiver inquiry list. The new rule describes how a request is submitted to add a child or adolescent name on the inquiry list. The new rule describes how an inquiry list request date is determined. The new rule describes the circumstances under which a child or adolescent name is removed from an inquiry list. In addition, the new rule describes the priority population of children who will be considered for a reserve capacity vacancy.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared a response to the comment received regarding the proposed rule during the comment period, which the commission has reviewed and accepts. The department received one comment from a representative of the Texas Council of Community Centers on behalf of the LMHAs. The commenter was not against the rule in its entirety; however, the commenter suggested recommendations for change as discussed in the summary that follows.

COMMENT: The commenter recommended that community mental health centers be allowed to accept verbal requests from a legally authorized representative or participant to remove their name from the YES Waiver inquiry list in addition to the allowance of a written request in §419.7(b)(1)(A) and (B).

RESPONSE: The commission agrees and has added language to the section to include verbal requests.

LEGAL CERTIFICATION

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

STATUTORY AUTHORITY

The new section is authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

§419.7. *Inquiry List.*

(a) **Inquiry List.** A list, maintained by each LMHA, of children and adolescents as defined by §419.2 of this title (relating to Definitions) who are interested in receiving YES Waiver program services and who reside in the LMHA's service area.

(1) Only a child or adolescent or the child's or adolescent's LAR may place a child's or adolescent's name on the inquiry list.

(2) The LMHA must assign the child or adolescent a registration date on the inquiry list that is based on the chronological date and time the phone call or voice message requesting YES Waiver program services was received.

(b) **Maintenance of Inquiry List.** The LMHA must maintain an up-to-date inquiry list.

(1) The LMHA must remove a child's or adolescent's name from the inquiry list if it is documented that:

(A) the child or adolescent or LAR has requested verbally or in writing that the child or adolescent's name be removed from the inquiry list;

(B) the child or adolescent or LAR has declined verbally or in writing YES Waiver program services;

(C) the child or adolescent or LAR has not responded to the LMHA's notification of a waiver vacancy within 30 calendar days of the LMHA's notification of the vacancy;

(D) the child or adolescent has moved out of Texas; or

(E) the child or adolescent is deceased.

(2) If a child's or adolescent's name is removed from an inquiry list in accordance with paragraph (1) of this subsection, and if the child or adolescent, LAR, or LMHA requests that the child's or adolescent's name be reinstated on the inquiry list, the child or adolescent, LAR, or LMHA may request that the department review the circumstances under which the child's or adolescent's name was removed from the LMHA's inquiry list. At its discretion the department may:

(A) reinstate the child's or adolescent's name on the inquiry list according to the original date the child or adolescent or LAR requested the child's or adolescent's name be added in accordance with subsection (a) of this section; or

(B) add the child's or adolescent's name to the inquiry list according to the date the child or adolescent or LAR requested that the department review the circumstances under which the child or adolescent's name was removed.

(c) Denial of enrollment. The department shall remove a child's or adolescent's name from an LMHA's inquiry list if the department has denied the child's or adolescent's enrollment in the YES Waiver program and the child or adolescent or LAR has had an opportunity to exercise the child or adolescent's right to appeal the decision in accordance with §419.8 of this title (relating to Right to Fair Hearing) and did not appeal the decision, or appealed the decision and did not prevail.

(d) Reserve capacity. There are a percentage of vacancies in the YES Waiver program that are reserved for children or adolescents who are at imminent risk of being relinquished to state custody.

(1) If a child or adolescent whose name has been added to the LMHA's inquiry list must wait to be enrolled, then the LMHA must screen the child or adolescent for imminent risk of relinquishment.

(2) If the LMHA determines that the child or adolescent may be at imminent risk of relinquishment, the LMHA must complete the YES Waiver Reserve Capacity Screening Form and submit to the department for review.

(3) If the department determines that the child or adolescent is at imminent risk of relinquishment, the department must authorize the LMHA to complete the enrollment process within three business days.

(4) If a child or adolescent is denied reserve capacity, then the LMHA must assign the child or adolescent a registration date on the inquiry list that is based on the chronological date and time the phone call or voice message requesting YES Waiver program services was received in accordance with subsection (a)(2) of this section.

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

Filed with the Office of the Secretary of State on September 26, 2016.

TRD-201605006

Lisa Hernandez

General Counsel

Department of State Health Services

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Proposal publication date: May 6, 2016

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

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

SUBCHAPTER A. FEES

DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

31 TAC §53.3

The Texas Parks and Wildlife Commission in a duly noticed meeting on May 26, 2016, adopted an amendment to §53.3, concerning Combination Hunting and Fishing License Packages, without changes to the proposed text as published in the April 22, 2016, issue of the *Texas Register* (41 TexReg 2851).

Under Parks and Wildlife Code, §42.012, the Texas Parks and Wildlife Commission (commission) is required to waive the hunting license fee for a qualified disabled veteran, defined as "a veteran with a service connected disability, as defined by the Veteran's Administration, consisting of the loss of the use of a lower extremity or of a disability rating of 50 percent or more and who is receiving compensation from the United States for the disability." Under Parks and Wildlife Code, §46.004, the commission is required to waive fishing license fees for a qualified disabled veteran as defined by Parks and Wildlife Code, §42.012. Under Parks and Wildlife Code, §50.001, the commission is required to establish fees for combination hunting and fishing licenses.

In November of 2013, the department adopted an amendment to §53.3 to designate nonresident disabled veterans as Texas residents for purposes of allowing them to obtain a super combination hunting and "all water" fishing package (or "super-combo," consisting of a resident hunting license, a migratory game bird stamp, an upland game bird stamp, an archery stamp, a resident fishing license, a freshwater fish stamp, and a saltwater sport-fishing stamp with a red drum tag) at no charge. As adopted (38 TexReg 9371), the amendment contained an August 31, 2016, sunset date. Staff was directed to encourage other states to promulgate reciprocal license privileges for Texas residents prior to the sunset date. Although such privileges were explored, due to differences among the states regarding hunting and fishing license structure, authority to set fees and fiscal realities, a reciprocal arrangement is not feasible. Notwithstanding the lack of reciprocity, the department has determined that it is appropriate to continue to allow nonresident disabled veterans to obtain the super-combo license package at no charge.

The department received four comments opposing adoption of the amendment as proposed. One of the commenters opposing adoption offered a reason or rationale for opposing adoption, stating that nonresidents should not be allowed to obtain

a license. The department disagrees with the comment and responds that, except for disabled veterans, the proposal as adopted does not change any of the hunting and fishing license requirements or fees for non-residents. As a result, the comment is beyond the scope of the proposal. The department also notes that the sale of nonresident licenses is authorized by the Parks and Wildlife Code and there is no compelling reason to prohibit nonresidents from obtaining a hunting or fishing license in order to protect a public resource. No changes were made as a result of the comment.

The department received 10 comments supporting adoption of the proposed amendment.

No groups or associations commented on the proposed amendment.

The amendment is adopted under the authority of Parks and Wildlife Code, §42.012, which requires the commission to waive the hunting license fee for a qualified disabled veteran §46.004, which requires the commission to waive fishing license fees for a qualified disabled veteran as defined by Parks and Wildlife Code, §42.012; and §50.001, which requires the commission to establish fees for combination hunting and fishing licenses.

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 22, 2016.

TRD-201604972

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Effective date: October 12, 2016

Proposal publication date: April 22, 2016

For further information, please call: (512) 389-4775



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 3. RESPONSIBILITIES OF STATE FACILITIES

SUBCHAPTER E. DEATH OF AN INDIVIDUAL

40 TAC §3.501

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), an amendment to §3.501, in Chapter 3, Administrative Responsibilities of State Facilities, without changes to the proposed text as published in the July 8, 2016, issue of the *Texas Register* (41 TexReg 4995).

The purpose of the amendment is to allow a physician assistant (PA) or an advanced practice registered nurse (APRN) to

determine and pronounce the death of an individual at a facility under certain circumstances, as permitted by Texas Health and Safety Code, §671.001(d). Specifically, §671.001(d) provides that a PA or APRN may determine and pronounce death if permitted to do so by written policies of the facility providing services, unless an artificial means of life support precludes a determination that a person's spontaneous respiratory and circulatory functions have ceased. If a determination is precluded as described in §671.001(d), a physician must determine and pronounce death. Section 671.001(d) also requires the executive commissioner of HHSC to adopt rules governing the policies for PAs and APRNs determining and pronouncing death at certain facilities. The amendment authorizes an APRN, but not a registered nurse, to determine and pronounce death because additional education and experience are required to be an APRN.

DADS received a written comment from the Coalition for Nurses in Advanced Practice. A summary of the comment and the response follows.

Comment: A commenter supported the amendment to §3.501 allowing an APRN and a PA to pronounce death in state facilities. The commenter stated that the proposed amendment is an important change that allows more efficient utilization of health care providers in state facilities. Additionally, the commenter stated the proposed rule amendment recognizes that APRNs may be a resident's primary care provider (PCP) and reduce the burden on physicians who would not be as familiar with the resident as the PCP. The commenter stated that as proposed, the rule provides adequate guidance on alternative situations that require physician involvement and the documentation that is required when a physician, APRN, or PA pronounces death.

Response: The agency appreciates the comments submitted in support of the proposed amendment.

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; and Texas Health and Safety Code, §671.001, which provides that the HHSC executive commissioner shall adopt rules governing the policies for physician assistants and advanced practice registered nurses determining and pronouncing death at certain 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 September 23, 2016.

TRD-201604983

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

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Proposal publication date: July 8, 2016

For further information, please call: (512) 438-3169

