

PROPOSED RULES

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

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

TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 109. TRANSACTIONS EXEMPT FROM REGISTRATION

7 TAC §§109.1 - 109.8, 109.11, 109.13, 109.14, 109.17

The Texas State Securities Board proposes amendments to twelve rules in this chapter to make nonsubstantive changes. Specifically, the Board proposes amendments to §109.1, concerning Transactions Involving Existing Security Holders; §109.2, concerning Parent Subsidiary Transactions; §109.3, concerning Financial Institutions under the Texas Securities Act, §5.H; §109.4, concerning Securities Registration Exemption for Sales to Financial Institutions and Certain Institutional Investors; §109.5, concerning Dealer Registration Exemption for Sales to Financial Institutions and Certain Institutional Investors; §109.6, concerning Investment Adviser Registration Exemption for Investment Advice to Financial Institutions and Certain Institutional Investors; §109.7, concerning Secondary Trading Exemption under the Texas Securities Act, §5.O; §109.8, concerning Initial Offering Completed; §109.11, concerning Guarantee of Options; §109.13, concerning Limited Offering Exemptions; §109.14, concerning Oil, Gas, and Other Mineral Interests; and §109.17, concerning Banks under the Securities Act, §5.L. The amendments would be made pursuant to the agency's periodic review of its rules and make no substantive changes.

The references to sections of the Texas Securities Act (Act) in §§109.1 - 109.8, 109.11, 109.13, 109.14, and 109.17 would be updated to refer to the correct sections in the codified version of the Act in the Texas Government Code. The codification was adopted by HB 4171, 86th Legislature, 2019 Regular Session, and became effective January 1, 2022. The captions of §§109.3, 109.7, and 109.17 would also be updated to refer to the codified version of the Act. The rest of the amendments would make other nonsubstantive and cleanup changes.

Section 109.1 would also be amended to replace the references to the term "Securities and Exchange Commission" with "SEC" and to abbreviate a cite to the Code of Federal Regulations found in subsection (d). SEC is already a defined term in §107.2, concerning Definitions. The Board has adopted an amendment to §107.2, concerning Definitions, to add "CFR" as a defined term, and the adoption notice for that amendment was submitted to the Texas Register concurrently with this proposal notice.

Sections 109.7(b), 109.8, 109.13, and 109.17 would also be amended to adjust the quotations to the Act in these provisions to be consistent with the codified Act.

Section 109.11 would also be amended to capitalize the term "Commissioner" for consistency.

Section 109.13 would also be amended to add a new definitions subsection in subsection (a) for use in this section, with the current text of that subsection being revised and reorganized into multiple paragraphs to incorporate the added definitions. Subsections (f), (g), and (h) of §109.13 would be renamed with more descriptive and precise captions.

The references to the term "Securities and Exchange Commission" found in §109.13(f)(1) and (l)(3) would also be replaced with "SEC," which is already a defined term in §107.2, concerning Definitions.

Section 109.13(l) would also be amended to add "of this subsection" to paragraphs (3), (4), and (5) of that subsection. Cross references in this section would also be corrected and conformed to the other proposed changes to this section.

Clint Edgar, Deputy Securities Commissioner, and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division, have determined that for the first five-year period the proposed rules are in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed rules.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the proposed rules are in effect the public benefits expected as a result of adoption of the proposed rules will be (1) improved readability and clarity by updating terminology, quotations, and references; and (2) statutory compliance by ensuring the rules are current and accurate and that they conform to the codified version of the Act which would promote transparency and efficient regulation. There will be no adverse economic effect on micro or small businesses or rural communities. Since the proposed rules will have no adverse economic effect on micro or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the rules as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed rules are in effect: they do not create or eliminate a government program; they do not require the creation or elimination of existing employee positions; they do not require an increase or decrease in future legislative appropriations to this agency; they do not require an increase or decrease in fees paid to this agency; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or negatively affect the state's economy. Additionally, the proposed amendments do not create

a new regulation, or expand, limit, or repeal an existing regulation.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed sections in the *Texas Register*. Written comments should be submitted to Cheryn Netz, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendments are proposed under the authority of the Texas Government Code, §4002.151, as adopted by HB 4171, 86th Legislature, 2019 Regular Session, effective January 1, 2022 (HB 4171). Section 4002.151 provides the Board with the authority to adopt rules as necessary to implement the provisions of the Texas Securities Act, including rules governing registration statements, applications, notices, and reports; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Additionally, §§109.3, 109.4, 109.8, and 109.14 are also proposed under the authority of the Texas Government Code, §4005.024, as also adopted by HB 4171, which provides that the Board may prescribe new exemptions by rule. Finally, §109.5 and §109.6 are also proposed under the authority of the Texas Government Code, §4004.001, as also adopted by HB 4171, which provides the Board with the authority to prescribe new dealer, agent, investment adviser, or investment adviser representative registration exemptions by rule.

The proposed amendments to §§109.4, 109.13, and 109.14 affect the following sections of the Texas Securities Act: Texas Government Code Chapter 4003, Subchapters A, B, and C. The proposed amendments to §§109.5, 109.6, and 109.14 affect Chapter 4004 of the Act. The proposed amendments to §§109.1 - 109.4, 109.7, 109.8, 109.11, 109.13, 109.14, and 109.17 affect Chapter 4005, Subchapter A of the Act.

§109.1. Transactions Involving Existing Security Holders.

(a) Section 4005.007 [Section 5-E] of the Act includes any offer and any transaction pursuant to any offer by the issuer of its "securities" to any one or more of its "existing security holders" even though such offer or transaction does not relate to all existing holders of such securities or to all existing holders of a class or series thereof.

(b) "Existing security holder" within the context of §4005.007 [section 5-E] does not include the following:

(1) - (2) (No change.)

(c) An employee's activities such as mailing reports, dividend notices, and revised prospectuses do not constitute "soliciting" within the context of §4005.007 [§5-E]. Furthermore, if an employee's job is fully justifiable even without soliciting existing security holders, occasional solicitations of existing security holders in this state will not affect the availability of §4005.007 [§5-E]. However, if an employee's primary job is to solicit existing security holders in this state either on a full-time or part-time basis, §4005.007 [§5-E] is not available.

(d) Where an open-end investment company adopts a plan pursuant to SEC [Securities and Exchange Commission] Rule 12b-1 (17 CFR §270.12b-1, as amended) [(47 Code of Federal Regulations §270.12b-1)] and funds are used to pay commissions or other remuneration for soliciting existing security holders in this state, §4005.007 [§5-E] is not available.

(e) Where an offering provides for a minimum investment and only a portion of such minimum is paid initially, §4005.007 [§5-E] is

not available for payments made subsequently to meet the required minimum investment.

§109.2. Parent Subsidiary Transactions.

Securities issued by a parent corporation for outstanding securities of a corporation in connection with a merger of such corporation into a wholly-owned or materially-owned (80%) subsidiary are exempt within the meaning of §4005.009 [§5-G] of the Act. The exemption also applies to the issuance of securities by the parent corporation in connection with a consolidation where the resulting new corporation is wholly-owned or materially-owned (80%) by the parent. Similarly, securities issued by a parent corporation for the purchase of assets for a wholly-owned or materially-owned (80%) subsidiary are exempt under §4005.009 [§5-G].

§109.3. Financial Institutions under the Texas Securities Act, §4005.011 [§5-H].

The term "savings institution," as used in the Texas Securities Act, §4005.011 [§5-H], includes any federally chartered credit union, savings and loan association, or federal savings bank, and any credit union or savings and loan association chartered under the laws of any state of the United States.

§109.4. Securities Registration Exemption for Sales to Financial Institutions and Certain Institutional Investors.

(a) Availability. The exemption from securities registration provided by the Texas Securities Act, §4005.011 [§5-H], or this section is not available if the financial institution or other institutional investor named therein is in fact acting only as agent for another purchaser that is not a financial institution or other institutional investor listed in §4005.011 [§5-H] or this section. These exemptions are available only if the financial institution or other institutional investor named therein is acting for its own account or as a bona fide trustee of a trust organized and existing other than for the purpose of acquiring the specific securities for which the seller is claiming the exemption.

(b) Sales to certain institutional investors. The State Securities Board, pursuant to the Act, §4005.024 [§5-F], exempts from the securities registration requirements of the Act, Chapter 4003, Subchapters A, B, and C [§7], the offer and sale of any securities to any of the following persons:

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

(c) (No change.)

§109.5. Dealer Registration Exemption for Sales to Financial Institutions and Certain Institutional Investors.

(a) Availability. The exemption from dealer and agent registration provided by the Texas Securities Act, §4004.001 [§5-H], or this section is not available if the financial institution or other institutional investor named therein is in fact acting only as agent for another purchaser that is not a financial institution or other institutional investor listed in §4005.011 [§5-H] or this section. These exemptions are available only if the financial institution or other institutional investor named therein is acting for its own account or as a bona fide trustee of a trust organized and existing other than for the purpose of acquiring the specific securities for which the dealer or agent is claiming the exemption.

(b) Sales to certain institutional investors. The State Securities Board, pursuant to the Act, §4004.001 [§5-T and §12-C], exempts a person from the dealer and agent registration requirements of the Act, when the person sells or offers for sale any securities to any of the following persons:

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

(c) (No change.)

§109.6. Investment Adviser Registration Exemption for Investment Advice to Financial Institutions and Certain Institutional Investors.

(a) Availability. The exemption from investment adviser and investment adviser representative registration provided by the Texas Securities Act, §4004.001 [§5-H], or this section is not available if the financial institution or other institutional investor named therein is in fact acting only as agent for another purchaser that is not a financial institution or other institutional investor listed in §4005.011 [§5-H] or this section. These exemptions are available only if the financial institution or other institutional investor named therein is acting for its own account or as a bona fide trustee of a trust organized and existing other than for the purpose of acquiring the investment advisory services for which the investment adviser or investment adviser representative is claiming the exemption. For purposes of this section, an investment adviser or investment adviser representative that is providing investment advisory services to a corporation, general partnership, limited partnership, limited liability company, trust or other legal entity, other than a private fund (as that term is defined in §139.23 of this title (relating to Registration Exemption for Investment Advisers to Private Funds)), is not providing investment advisory services to a shareholder, general partner, member, other security holder, beneficiary or other beneficial owner of the legal entity unless the investment adviser provides investment advisory services to such owner separate and apart from the investment advisory services provided to the legal entity.

(b) Investment advice rendered to certain institutional investors. The State Securities Board, pursuant to the Act, §4004.001 [§5-F and §12-C], exempts from the investment adviser and investment adviser representative registration requirements of the Act, persons who render investment advisory services to any of the following:

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

(c) - (e) (No change.)

§109.7. Secondary Trading Exemption under the Texas Securities Act, §4005.019 [§5-Θ].

(a) When a withdrawal of an application for registration of securities is allowed and thereafter the applicant files for a secondary trading exemption under the Act, §4005.019 [§5-Θ], the Commissioner may, without a hearing, revoke or suspend the §4005.019 [§5-Θ] exemption. The applicant may either accept such action of the Commissioner or request a hearing under the Act, §4007.107 [§24].

(b) The language, ". . . at prices reasonably related to the current market price of the [such] securities at the time of the [such] sale," means that the market price of the security in the existing secondary market must have a basis supported by a substantial volume of bona fide sales transactions within or without this state. In the absence of a going market or where there have been only casual transactions, it shall be incumbent on the person filing the §4005.019 [§5-Θ] exemption notice to prove to the Commissioner that the securities will have a market price which has been fairly determined and justified at inception with reasonable assurance of continuity of the market into the future, pursuant to which the following criteria will be considered:

(1) - (7) (No change.)

(c) Sales of securities pursuant to the Securities Act, §4005.019 [§5-Θ], may be made by or through securities dealers acting either as principal or agent in the transaction for which the exemption is claimed.

(d) Financial information required pursuant to the Act, §4005.019(b)(9)(B)(ii) and (iii), [§5-Θ(9)(b) and (e)] must be prepared as certified financial statements (consolidated, if applicable) and shall include a balance sheet as of a date within 18 months of the date of

such sale and the related statements of income, changes in stockholders' equity, and changes in financial position for the three most recent fiscal years ending as of the balance sheet date, or for the period of the issuer's existence, if less than three years. Such financial statements should disclose dividends paid or declared by each class of stock, for each period for which an income statement is presented.

(e) The term "recognized securities manual" as used in the Texas Securities Act, §4005.019 [§5-Θ(9)(e)], is limited to Best Insurance Reports Life-Health, any Mergent's Manual, and the OTC Markets Group Inc. website (www.otcmarkets.com) for a company that is currently or has recently been quoted on the OTCQX or OTCQB markets. This designation encompasses both print and electronic data and includes periodic supplements to these publications. The information provided in the recognized securities manual must contain the information specified in subsection (d) of this section. All information provided must be current. The time for determining whether the entries are current is at the date of the particular sale, not the date the manual listings are published. If a listing is not continually updated, the exemption would not be available once the published balance sheet becomes more than 18 months old.

(f) The secondary trading exemption under the Act, §4005.019 [§5-Θ], is not available for the securities of an issuer formed in a manner that constitutes part of a scheme to violate or evade the securities registration provisions of the Act. Depending upon all the facts and circumstances, such a scheme may include the merger of a private corporation with a corporation which has no substantive operations or assets ("shell corporation") when as a result of the merger trading in the secondary market of the shares of the post-merger corporation may be at prices which bear no relationship to the underlying financial condition or operations of the post-merger corporation, and such trading may occur within two years of the date of such merger.

§109.8. Initial Offering Completed.

The phrase "initial offering of the [such] securities has been completed," used in §4005.020 [section 5-P] of the Act, means that any nonexempt public distribution of such securities has been completely sold to the public.

§109.11. Guarantee of Options.

(a) - (c) (No change.)

(d) In lieu of the three requirements in subsections (a) - (c) [(a)-(e)] of this section, the section 4005.023(b)(1) and (b)(2) [section 5-S(4)] guarantee requirements will be satisfied if the option is issued by a clearing corporation recognized by the State Securities Board as satisfying all the following standards.

(1) - (2) (No change.)

(3) The clearing corporation must be registered as a national clearing agency under the Securities Exchange Act of 1934, as amended, and must file with the Commissioner [eommissioner] a copy of the prospectus respecting such option currently being delivered pursuant to the requirements of the Securities Act of 1933, as amended, and further must agree to promptly file with the Commissioner [eommissioner] a copy of any amendments of such prospectus.

(4) - (5) (No change.)

(e) (No change.)

§109.13. Limited Offering Exemptions.

(a) The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. [Public solicitation, well-informed, and sophisticated investor. The offer for sale or sale of the securities of the issuer would not

involve the use of public solicitation under the Act, §5-I, if the issuer, after having made a reasonable factual inquiry has reasonable cause to believe, and does believe, that the purchasers of the securities are sophisticated, well-informed investors or well-informed investors who have a relationship with the issuer or its principals, executive officers, or directors evincing trust between the parties (namely close business association, close friendship, or close family ties); and such purchasers acquire the securities as ultimate purchasers and not as underwriters or conduits to other beneficial owners or subsequent purchasers. The use of a registered dealer in a sale otherwise meeting the requirements of §5-I does not necessarily mean that the transaction involves the use of public solicitation. The offer without advertising to a person who did not come within the class of persons described in this subsection does not alone result in public solicitation if the issuer had a reasonable cause to believe and did believe that such person fell within the class of persons described, and that such offer was not made indiscriminately.]

(1) Private Offering Exemptions. The term "Private Offering Exemptions" refers to §4005.012 and §4005.013 of the Act. [The term "well-informed" could be satisfied through the dissemination of printed material to each purchaser prior to his or her purchase, which by a fair and factual presentation discloses the plan of business, the history, and the financial statements of the issuer, including material facts necessary in order that the statements made, in the light of circumstances under which they are made, not be misleading.]

(2) Limited Offering Exemptions. The term "Limited Offering Exemptions" refers to the two limited offering exemptions found in subsections (a)(1) and (a)(2) of §§4005.012 of the Act. The term "Limited Offering Exemption (a)(1)" refers to the exemption in subsection (a)(1) of §4005.012 of the Act, and the term "Limited Offering Exemption (a)(2)" refers to the exemption in subsection (a)(2) of §4005.012 of the Act. [In determining who is a sophisticated investor at least the following factors should be considered:]

{(A) The financial capacity of the investor, to be of such proportion that the total cost of that investor's commitment in the proposed investment would not be material when compared with his total financial capacity. It may be presumed that if the investment does not exceed 20% of the investor's net worth (or joint net worth with the investor's spouse) at the time of sale that the amount invested is not material.}

{(B) Knowledge of finance, securities, and investments, generally. This criteria may be met by the investor's purchaser representative if such purchaser representative has such knowledge, so long as such purchaser representative:}

{(i) has no business relationship with the issuer;}

{(ii) represents only the investor and not the issuer;}

and]

{(iii) is compensated only by the investor.}

{(C) Experience and skill in investments based on actual participation. This criteria may be met by the investor's purchaser representative if such purchaser representative has such experience and skill, so long as such purchaser representative:}

{(i) has no business relationship with the issuer;}

{(ii) represents only the investor and not the issuer;}

and]

{(iii) is compensated only by the investor.}

(3) Registration Sections. The term "Registration Sections" refers to Subchapters A, B, and C of Chapter 4003 of the Act.

(4) Public solicitation. The offer for sale or sale of the securities of the issuer would not involve the use of public solicitation under the Private Offering Exemptions if the issuer, after having made a reasonable factual inquiry has reasonable cause to believe, and does believe, that the purchasers of the securities are sophisticated, well-informed investors or well-informed investors who have a relationship with the issuer or its principals, executive officers, or directors evincing trust between the parties (namely close business association, close friendship, or close family ties), and such purchasers acquire the securities as ultimate purchasers and not as underwriters or conduits to other beneficial owners or subsequent purchasers. The use of a registered dealer in a sale otherwise meeting the requirements of either §4005.0012 or §4005.013 does not necessarily mean that the transaction involves the use of public solicitation. The offer without advertising to a person who did not come within the class of persons described in this subsection does not alone result in public solicitation if the issuer had a reasonable cause to believe and did believe that such person fell within the class of persons described, and that such offer was not made indiscriminately.

(5) Well informed. The term "well-informed" could be satisfied through the dissemination of printed material to each purchaser prior to his or her purchase, which by a fair and factual presentation discloses the plan of business, the history, and the financial statements of the issuer, including material facts necessary in order that the statements made, in the light of circumstances under which they are made, not be misleading.

(6) Sophisticated investor. In determining who is a sophisticated investor at least the following factors should be considered.

(A) The financial capacity of the investor, to be of such proportion that the total cost of that investor's commitment in the proposed investment would not be material when compared with his total financial capacity. It may be presumed that if the investment does not exceed 20% of the investor's net worth (or joint net worth with the investor's spouse) at the time of sale that the amount invested is not material.

(B) Knowledge of finance, securities, and investments, generally. This criteria may be met by the investor's purchaser representative if such purchaser representative has such knowledge, so long as such purchaser representative:

(i) has no business relationship with the issuer;

(ii) represents only the investor and not the issuer;

and

(iii) is compensated only by the investor.

(C) Experience and skill in investments based on actual participation. This criteria may be met by the investor's purchaser representative if such purchaser representative has such experience and skill, so long as such purchaser representative:

(i) has no business relationship with the issuer;

(ii) represents only the investor and not the issuer;

and

(iii) is compensated only by the investor.

(b) Advertisements. The term "advertisements" does not include the use of the type of printed material as set out in subsection (a) of this section under the discussion of the term "well-informed." Further, the main concept to be considered in a definitional analysis of the term "advertisements," as it is used in the Private Offering Exemptions [§5-I,] is the method of use of the printed material. The following circumstances, though not intended to be exclusive, will be considered

in determining whether the method of use of any printed material is within the limits of the Private Offering Exemptions [§5-I]:

(1) - (4) (No change.)

(c) Number of security holders or purchasers of securities. In computing the number of purchasers or security holders for the Private Offering Exemptions [§5-I], the following criteria shall be used.

(1) (No change.)

(2) There shall be counted as one purchaser or security holder any corporation, partnership, association, joint stock company, trust, or unincorporated association, organized and existing other than for the purpose of acquiring securities of the issuer for which the exemption is claimed under the Private Offering Exemptions [§5-I].

(3) Any general partner of a limited partnership who is subject to general liability for the obligations of the limited partnership and actively engages in the control and management of the business and affairs of the limited partnership or of the managing general partner of the partnership shall not be counted as a purchaser or security holder for purposes of the Private Offering Exemptions [§5-I].

(4) The Limited Offering Exemptions [exemptions contained in the Act, §5-I(a) and (e)], as interpreted in subsections (a) - (j) of this section may not be combined with the exemptions promulgated pursuant to the Act, §4005.024 [§5-F], contained in subsections (k) and (l) of this section to exceed sales to 35 unaccredited investors in a 12-month period.

(5) "Security holders" or "purchasers of securities," as those terms are used in the Limited Offering Exemptions [Aet, §5-I(a) and 5-I(e)], do not include holders of any options granted pursuant to a plan that falls within the exemption for compensatory or benefit plans provided by §4005.013 of the Act[, §5-I(b)].

(d) Total number of security holders. The phrase "the total number of security holders of the issuer" in the Limited Offering Exemption (a)(1) [§5-I(a)] includes all security holders of the issuer without regard to their places of residence (within or without the State of Texas) and without regard to where they acquired the securities. In determining the number of persons for purposes of the Limited Offering Exemption (a)(2) [§5-I(e)], prior sales to persons residing outside the State of Texas and prior sales to Texas residents consummated outside the State of Texas shall be included unless such sales were made in compliance with §139.7 of this title (relating to Sale of Securities to Nonresidents).

(e) Other exemptions. The phrase "exempt under another provision of this subchapter [other provisions of this §5]" in §4005.012(b)(1) [§5-I(e)] means exempt under any provisions of the Act, other than the Limited Offering Exemption subsection (a)(1) of this section [§5-I(a)], and subsections (k) and (l) of this section.

(f) Compensation plans and contracts exemption found in §4005.013 of the Act [Compensatory or benefit plans].

(1) No public solicitation or advertisement under §4005.013 of the Act [§5-I] occurs by the distribution to eligible persons of a prospectus filed under the Securities Act of 1933 with the SEC [Securities and Exchange Commission] for the plan or any other material required or permitted to be distributed by the Securities Act of 1933 in connection with such plan when the securities under the plan are sold or distributed in a transaction otherwise meeting the requirements of §4005.013 [§5-I(b)].

(2) Insurance agents who are exclusive agents of the issuer or its subsidiary or derive more than 50% of their annual income from

the issuer or its subsidiary are deemed "employees" as that term is used in §4005.013 [§5-I(b)].

(g) Sales made under §4005.013 of the Act. [Compensatory or benefit plan sales.] Only the employer and its participating subsidiaries, parents, or subsidiaries of such parents, if any, may offer or sell securities in connection with the employee plan without registration as dealers. For purposes of §4005.013 of the Act. [§5-I(b)], the term "issuer" includes a general partner of a limited partnership with respect to a security sold or distributed by such limited partnership in a transaction otherwise meeting the requirements of §4005.013 of the Act [§5-I(b)]. An employee of the issuer or its participating subsidiary who aids in offering or selling such securities in connection with the plan is not required to be registered as an agent provided the employee meets all of the following conditions:

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

(h) Section 4005.013 [Compensatory or benefit] plans for counting purposes. A noncontributory stock ownership plan or stock ownership trust that holds securities of the issuer for the benefit of the participants in that issuer's plan shall be counted as one security holder under the Limited Offering Exemption in (a)(1) of this section [§5-I(a)]. Plan participants in such a stock ownership plan or trust will not be deemed security holders of the issuer for purposes of counting security holders under the Limited Offering Exemption in (a)(1) of this section [§5-I(a)] solely because of their participation in the plan or trust. However, participants receiving distributions of securities from the plan or trust will be deemed security holders of the issuer on receipt of securities of the issuer from the plan or trust.

(i) Notices. There is no notice filing requirement for sales made under the Private Offering Exemptions [the Act, §5-I(a), (b), or (e)].

(j) (No change.)

(k) Limited offering exemption coordinating with SEC Regulation D, Rule 506. In addition to sales made under the Private Offering Exemptions [Texas Securities Act, §5-I], the State Securities Board, pursuant to the Act, §4005.024 [§5-F], exempts from the registration requirements of the Registration Sections [Aet, §7], any offer or sale of securities offered or sold in compliance with the Securities Act of 1933, Regulation D (17 C.F.R. §§230.500-230.508, as amended), Rule 506, including any offer or sale made exempt by application of Rule 508(a), and which satisfies the following further conditions and limitations.

(1) - (5) (No change.)

(6) When an offering is made in compliance with Regulation D of the SEC and the offering will be made by or through a registered securities dealer, the issuer and its directors, officers, agents, and employees may make themselves available to answer questions from offerees, as required by Rule 502(b)(2)(v) of Regulation D, without being required to register as securities dealers or agents under Chapter 4004 of the Act[, §12].

(l) Intrastate limited offering exemption. In addition to sales made under the Private Offering Exemptions [Texas Securities Act, §5-I], the State Securities Board, pursuant to the Act, §4005.024 [§5-F], exempts from the registration requirements of the Registration Sections [Aet, §7], any offer or sale of any securities by the issuer itself, or by a registered dealer acting as agent for the issuer provided all offers and sales are made pursuant to an offering made and completed solely within this state and all the conditions in paragraphs (1) - (11) of this subsection are satisfied.

(1) The sale is made, without the use of any public solicitation or advertisements, as set forth in subsections [subsection] (a) and [subsection] (b) of this section to:

(A) (No change.)

(B) other well-informed investors who are "accredited investors" as defined in §107.2 of this title (relating to Definitions). (For purposes of this subsection, the term "well informed" shall have the same meaning as set out in subsection (a)(5) [(a)(4)] of this section, and the term "Private Offering Exemptions" ["5-F"] in such subsection shall include sales made pursuant to this subsection.)

(2) (No change.)

(3) The prohibitions of subparagraphs (A) - (C) of paragraph (2) of this subsection shall not apply if the party subject to the disqualifying order is duly licensed to conduct securities-related business in the state in which the administrative order or judgment was entered against such party or, if the order or judgment was entered by federal authorities, the prohibitions of subparagraphs (A) - (C) of paragraph (2) of this subsection shall not apply if the party subject to the disqualifying order is duly licensed to conduct securities-related business by the SEC [Securities and Exchange Commission]. Any disqualification caused by paragraph (2) of this subsection is automatically waived if the state or federal authorities which created the basis for disqualification determine upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

(4) For purposes of paragraphs (2) and (3) of this subsection only, "issuer" includes any directors, executive officers, general partners, or beneficial owners of 10% or more of any class of its equity securities (beneficial ownership meaning the power to vote or direct the vote and/or the power to dispose or direct the disposition of such securities), and "registered dealer" shall include any partners, directors, executive officers, or beneficial owner of 10% or more of any class of the equity securities of the registered dealer (beneficial ownership meaning the power to vote or direct the vote and/or the power to dispose or direct the disposition of such securities).

(5) Upon application, and for good cause shown, the Commissioner may waive a disqualification contained in paragraph (2) of this subsection.

(6) The offering complies with subsections (a) - (d) and (j) of this section. However, persons who are "accredited investors" as defined in §107.2 of this title are deemed to be "sophisticated" as defined in subsection (a)(6) [(a)(2)] of this section.

(7) This subsection may not be combined with either of the Limited Offering Exemptions [the Securities Act, §5-I(a) or §5-I(e)], or subsection (k) of this section to make sales to more than 35 unaccredited security holders during a 12-month period. Except for accredited investors who became security holders pursuant to this subsection, security holders who purchase in sales made in compliance with this subsection are included in the count of security holders under the Limited Offering Exemption subsection (a)(1) of this section [under §5-I(a)] or purchasers under the Limited Offering Exemption subsection(a)(2) of this section [§5-I(e)], but this subsection may be used to exceed the numbers of security holders or purchasers allowed by such sections over an extended period of time.

(8) - (9) (No change.)

(10) Accredited investor security holders who purchase in sales made under this exemption are not counted as security holders under the Limited Offering Exemption subsection (a)(1) of this section [§5-I(a)] or purchasers under the Limited Offering Exemption (a)(2) [§5-I(e)] in determining whether any other sales to other security hold-

ers or purchasers are exempt under the Private Offering Exemptions [§5-I]. That is to say, this exemption for sales to accredited investors is cumulative with and in addition to the Private Offering Exemptions [exemptions contained in §5-I], and sales made under paragraph (1)(B) of this subsection are not considered in determining whether sales made in reliance on the exemptions contained in the Private Offering Exemptions [§5-I] would be within the numerical limits on the number of security holders or purchasers contained in the Private Offering Exemptions [§5-I].

(11) (No change.)

§109.14. Oil, Gas, and Other Mineral Interests.

(a) It is the intent of the State Securities Board that §109.13(a) - (c) and (j) of this title (relating to Limited Offering Exemptions) apply to transactions made pursuant to the Securities Act, §4005.021 [§5-Q], and that the terms defined in §109.13(a) - (c) and (j) of this title [(relating to Limited Offering Exemptions)] have the same meanings for purposes of §4005.021 [§5-Q] as they do for exemptions set forth in §4005.012 and §4005.013 of the Securities Act[, §5-I].

(b) For the purposes of §4005.021 [§5-Q], an employee of the owner of an oil, gas, or mineral lease, fee, or title may aid such owner/employer in selling interests in such lease, fee, or title and will not be considered an agent required to be licensed under the Act provided all the following conditions are satisfied:

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

(c) In addition to sales made under the Securities Act, §4005.021 [§5-Q], the State Securities Board, pursuant to the Act, §4005.024 [§5-F], exempts from the registration requirements of the Act, Chapter 4003, Subchapters A, B, and C [§7], the sale of interests in and under oil, gas, and mining leases, fees, or titles, or contracts relating thereto (hereinafter called securities), by the owner itself, or by a registered dealer acting as agent for the owner, provided all of the conditions of §109.13(k) or (l) of this title [(relating to Limited Offering Exemptions)] are met. The purpose of this subsection is to provide a mechanism which will allow for sales of the securities listed herein to accredited investors where the conditions of §109.13(k) or (l) of this title [(relating to Limited Offering Exemptions)] are met.

(d) Exemption for transactions among persons in the oil and gas industry.

(1) In addition to offers and sales made pursuant to the Act, §4005.021 [§5-Q], the State Securities Board, pursuant to the Act, §4005.024 [§5-F], exempts from the securities registration requirements of the Act, Chapter 4003, Subchapters A, B, and C [§7], and the dealer and agent registration requirements of the Act, Chapter 4004 [§12 and §18], the offer and sale of any interest in or under an oil, gas, or mining lease, fee, or title, or payments out of production in or under such leases, fees, or titles or contracts relating thereto by the owner or an agent for the owner when such offer or sale is made to persons and/or companies each of whom the owner or owner's agent shall have reasonable cause to believe and does believe meets the following criteria:

(A) - (C) (No change.)

(2) (No change.)

(3) For purposes of this rule, an "agent for the owner" includes the following:

(A) - (B) (No change.)

(C) persons who meet the dealer registration requirements of Chapter 4004 of the Securities Act[, §12]; and

(D) (No change.)

(4) (No change.)

(e) Any person who acts as an agent of an owner or a purchaser in connection with a sale of an interest described in subsection (d) of this section to a person who does not meet the criteria set forth in subsection (d)(1)(A) - (C) of this section will not be exempt from the dealer registration requirements of Chapter 4004 of the Act[; §12.] unless another exemption is available.

§109.17. *Banks under the Securities Act, §4005.016* [~~§5-L~~].

(a) The phrase "a [any] savings and loan association organized and subject to regulation under the laws of this State" shall include any Texas state chartered savings bank.

(b) The phrase "a [any] federal savings and loan association" shall include any federally chartered savings bank.

(c) The phrase "a [any] bank organized and subject to regulation [; ;] under the laws of . . . [any State or territory of the United States]" shall include any Texas state chartered limited banking association.

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

Filed with the Office of the Secretary of State on March 18, 2024.

TRD-202401195

Travis J. Iles

Securities Commissioner

State Securities Board

Earliest possible date of adoption: April 28, 2024

For further information, please call: (512) 305-8303



TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 26. TEXAS HOUSING TRUST FUND RULE

SUBCHAPTER B. AMY YOUNG BARRIER REMOVAL PROGRAM

10 TAC §§26.20 - 26.28

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 26, Texas Housing Trust Fund Rule, Subchapter B, Amy Young Barrier Removal Program. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect, the proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption

making changes to an existing activity, administration of the Amy Young Barrier Removal Program.

2. The proposed repeal does not require a change in work that would require the creation of new employee positions, nor is the proposed repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.

3. The proposed repeal does not require additional future legislative appropriations.

4. The proposed repeal does not result in an increase in fees paid to the Department, nor a decrease in fees paid to the Department.

5. The proposed repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the administration the Texas Housing Trust Fund.

7. The proposed repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The proposed repeal will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this proposed repeal and determined that the proposed repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed repeal does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the proposed repeal as to its possible effects on local economies and has determined that for the first five years the proposed repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed chapter would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the repealed chapter.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson has also determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held March 29, 2024, to May 2, 2024, to receive input on the proposed repealed chapter. Written comments may

be submitted to the Texas Department of Housing and Community Affairs, Attn: Erin Mikulenska, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email erin.mikulenska@tdhca.texas.gov. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Central time, May 2, 2024.

STATUTORY AUTHORITY. The proposed repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed repealed chapter affects no other code, article, or statute.

§26.20. *Amy Young Barrier Removal Program Purpose.*

§26.21. *Amy Young Barrier Removal Program Definitions.*

§26.22. *Amy Young Barrier Removal Program Geographic Dispersion.*

§26.23. *Amy Young Barrier Removal Program Administrative Requirements.*

§26.24. *Amy Young Barrier Removal Program Reservation System Requirements.*

§26.25. *Amy Young Barrier Removal Program Household Eligibility Requirements.*

§26.26. *Amy Young Barrier Removal Program Property Eligibility Requirements.*

§26.27. *Amy Young Barrier Removal Program Construction Requirements.*

§26.28. *Amy Young Barrier Removal Program Project Completion Requirements.*

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

Filed with the Office of the Secretary of State on March 15, 2024.

TRD-202401163

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: April 28, 2024

For further information, please call: (512) 483-1148



10 TAC §§26.20 - 26.28

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 26, Texas Housing Trust Fund Rule, Subchapter B, Amy Young Barrier Removal Program, §§26.20 - 26.28. The purpose of the proposed new chapter is to implement a more germane rule and better align administration to state requirements.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed new rule would be in effect:

1. The proposed rule does not create or eliminate a government program, but relates to the re adoption of this rule which makes changes to administration of the Texas Housing Trust Fund.
2. The proposed new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The proposed new rule changes do not require additional future legislative appropriations.
4. The proposed new rule changes will not result in an increase in fees paid to the Department nor a decrease in fees paid to the Department.
5. The proposed new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The proposed new rule will not expand or repeal an existing regulation.
7. The proposed new rule will not increase or decrease the number of individuals subject to the rule's applicability.
8. The proposed new rule will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this proposed new rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.111.

1. The Department has evaluated this proposed new rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.
2. There are approximately 20 rural communities currently participating in the Texas Housing Trust Fund that are subject to the proposed new rule for which no economic impact of the rule is projected during the first year the rule is in effect.
3. The Department has determined that because the proposed new rule serves to clarify and update existing requirements and does not establish new requirements for which there would be an associated cost, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed new rule does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the proposed new rule will be in effect the proposed

rule has no economic effect on local employment because the rule serves to clarify and update existing requirements and does not establish new requirements or activities that may positively or negatively impact local economies.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that participation in the programs funded with the Texas Housing Trust Fund is at the discretion of the eligible subrecipients, there are no "probable" effects of the proposed new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the proposed new rule is in effect, the public benefit anticipated as a result of the rule will be a more germane rule that better aligns administration to state requirements. There will not be any economic cost to any individuals required to comply with the proposed new rule because the processes described by the rule have already been in place through the rule found at this chapter being repealed.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson has also determined that for each year of the first five years the proposed new rule is in effect, enforcing or administering the rule does not have any foreseeable implications related to costs or revenues of the state or local governments because the rule updates and clarifies existing requirements and does not impose new requirements.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held March 29, 2024, to May 2, 2024, to receive input on the proposed new chapter. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Erin Mikulenka, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0220, or email erin.mikulenka@tdhca.texas.gov. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Central time, May 2, 2024.

STATUTORY AUTHORITY. The new chapter is proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new chapter affects no other code, article, or statute.

§26.20. Amy Young Barrier Removal Program Purpose.

The Amy Young Barrier Removal Program (the Program or AYBRP) provides one-time grants in combined Hard and Soft Costs to Persons with Disabilities in a Household qualified as Low-Income. Grant limits per household will be identified in the Notice of Funding Availability (NOFA). Grants are for home modifications that increase accessibility and eliminate substandard conditions.

§26.21. Amy Young Barrier Removal Program Definitions.

The following words and terms used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise. Other definitions are found in Tex. Gov't Code, Chapter 2306, Chapter 1 of this title (relating to Administration), Chapter 2 of this title (relating to Enforcement), Chapter 20 of this title (relating to Single Family Programs Umbrella Rule), Chapter 21 of this title (relating to Minimum Energy Efficiency Requirements for Single Family Construction Activities), and Chapter 26, Subchapter A of this title (relating to General Guidance).

(1) Administrative Fee--Funds equal to 10% of the Project Costs (combined Hard and Soft Costs) paid to an Administrator upon completion of a project.

(2) Hard Costs--Site-specific costs incurred during construction, including, but not limited to: general requirements, building permits, jobsite toilet rental, dumpster fees, site preparation, demolition, construction materials, labor, installation equipment expenses, etc.

(3) Household Assistance Contract--A written agreement between the Department and Administrator that memorializes the term of the commitment of funds for a specific activity.

(4) Low-Income--Household income calculated in accordance with the Program Manual that does not exceed the greater of 80% of the Area Median Family Income or 80% of the State Median Family Income, adjusted for Household size, in accordance with the current HOME Investment Partnerships Program income limits, as defined by HUD.

(5) Project Costs--Program funds (combined Hard and Soft Costs) that directly assist a Household.

(6) Reservation System Participant (RSP)--Administrator who has executed a written Agreement with the Department that allows for participation in the Reservation System.

(7) Soft Costs--Costs related to and identified with a specific Single Family Housing Unit other than construction costs.

§26.22. Amy Young Barrier Removal Program Geographic Dispersion.

(a) The process to promote geographic dispersion of program funds is as described in this subsection:

(1) For a published period not less than 30 days and in accordance with the NOFA, each state region will be allocated funding amounts for its rural and urban subregions. During this initial period, these funds may be reserved only for Households located in these rural and urban subregions;

(2) After the initial release of funds under paragraph (1) of this subsection, each state region will combine any remaining funds from its rural and urban subregions into one regional balance for a second published period not to exceed 90 calendar days. During this second period, these funds may be reserved only for Households located in that state region; and

(3) After no more than 180 calendar days following the initial release date, any funds remaining across all state regions will collapse into one statewide pool. For as long as funds are available, these funds may be reserved for any Households anywhere in the state on a first-come, first-served basis.

(b) If any additional funds beyond the original program allocations that derive from Texas HTF loan repayments, interest earnings, deobligations, and/or other Texas HTF funds in excess of those funds required under Rider 8 or the Department's appropriation made under the General Appropriations Act may be reprogrammed at the discretion of the Department.

§26.23. Amy Young Barrier Removal Program Administrative Requirements.

(a) To participate in the Program, an eligible participant must first be approved as an Administrator by the Department through the submission of a Reservation System Access Application. Eligible participants include, but are not limited to: Colonia Self-Help Centers established under Tex. Gov't Code, Chapter 2306, Subchapter Z; Coun-

cils of Government; Units of Local Government; Nonprofit Organizations; Local Mental Health Authorities; and Public Housing Authorities. An eligible participant may be further limited by NOFA.

(b) The Department will produce an Application to satisfy the requirements for an eligible participant to apply to become an AYBR Administrator. The application will be available on the Department's website. Applications to access the Reservation System will include, at a minimum, criteria listed in paragraphs (1) - (7) of this subsection.

(1) A Nonprofit Organization must submit a current letter of determination from the Internal Revenue Service (IRS) under §501(c)(3), a charitable, nonprofit corporation, of the Internal Revenue Code of 1986, as evidenced by a certificate from the IRS that is dated 1986 or later. The exemption ruling must be effective throughout the term of the RSP Agreement to access the Reservation System.

(2) A private Nonprofit Organization must be registered and in good standing with the Office of the Secretary of State and the State Comptroller's Office to do business in the State of Texas.

(3) The Applicant must demonstrate at least two years of capacity and experience in housing rehabilitation in Texas. The Applicant will be required to provide a summary of experience that must describe the capacity of key staff members and their skills and experience in client intake, records management, and managing housing rehabilitation. It must also describe organizational knowledge and experience in serving Persons with Disabilities.

(4) The Applicant must provide evidence of adherence to applicable financial accountability standards, demonstrated by an audited financial statement by a Certified Public Accountant for the most recent fiscal year. For a Nonprofit Organizations that does not yet have audited financial statements, the Department may accept a resolution from the Board of Directors that is signed and dated within the six months preceding the Application and that certifies that the procedures used by the organization conform to the requirements in 10 TAC §1.402 (relating to Cost Principles and Administrative Requirements), and that the organization has adopted generally accepted accounting procedures that conform to Governmental Accounting Standards Board (GASB) or the Financial Accounting Standards Board (FASB), as applicable.

(5) The Applicant must submit a resolution from the Applicant's direct governing body that authorizes the submission of the Application and is signed and dated within the six months preceding the date of application submission. The resolution must include the name and title of the individual authorized to execute an RSP Agreement.

(6) The Applicant's history will be evaluated in accordance with 10 TAC Chapter 1, Subchapter C, §1.302 and §1.303, (relating to Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter, and Executive Director Review, respectively). Access to funds may be subject to terms and conditions.

(7) If applicable, the Applicant must submit copies of executed contracts with consultants or other organizations that are assisting in the implementation of the applicant's AYBR Program activities. The Applicant must provide a summary of the consultant or other organization's experience in housing rehabilitation and/or serving Persons with Disabilities.

(c) Administrators must follow the processes and procedures as required by the Department through its governing statute (Chapter 2306 of the Government Code), Administrative Rules (Texas Administrative Code, Title 10, Part 1), Reservation Agreement, Program Manual, forms, and NOFA.

§26.24. Amy Young Barrier Removal Program Reservation System Requirements.

(a) Terms of Agreement. The term of an RSP Agreement will not exceed the lesser of 36 months, or the term limitation defined in the NOFA. Execution of an RSP Agreement does not guarantee the availability of funds under a reservation system. Reservations submitted under an RSP agreement will be subject to the provisions of this chapter in effect as of the date of submission by the Administrator.

(b) Limit on Number of Reservations. The limitation on the number of Reservations will be established in the NOFA.

(c) Administrator must remain in good standing with the Department and the state of Texas. If an Administrator is not in good standing, participation in the Reservation System will be suspended and may result in termination of the RSP Agreement.

(d) Reservations will be processed in the order submitted on the Reservation System. Submission of a Reservation consisting of support documentation on behalf of a Household does not guarantee funding.

(e) Reservations may be submitted in stages, and shall be processed through each stage as outlined in the Program Manual. All stages must be completed on or before the expiration of the Household Assistance Contract.

(f) Administrator must submit a substantially complete request for each stage of the Reservation as outlined in the Program Manual. Administrators must upload all required information and verification documentation in the Contract System. Requests determined to be substantially incomplete will not be reviewed and may be disapproved by the Department. If the Department identifies administrative deficiencies during review, the Department will allow a cure period of 14 calendar days beginning at the start of the first day following the date the Administrator is notified of the deficiency. If any administrative deficiencies remain after the cure period, the Department, in its sole discretion, may disapprove the request. Disapproved requests shall not constitute a Reservation of Funds.

(g) If a Household is determined to be eligible for assistance from the Department, the Department will issue a Household Assistance Contract reflecting the maximum award amount permitted under the NOFA in Project Costs and an Administrative Fee equal to 10% of the combined Hard and Soft costs in the Contract System on behalf of the Household, funding permitting. The term of the Household Assistance Contract may not exceed 12 months unless amended in accordance with this Subchapter.

(h) Amendments to Household Assistance Contracts may be considered by the Department provided the approval does not conflict with the state regulations governing use of these funds, or impact obligation or expenditure deadlines. The Executive Director's authorized designee may approve an amendment that:

(1) extends the term of a Household Assistance by not more than three months;

(2) extends the draw period by not more than three months after the expiration of the Household Assistance Contract; or

(3) increases Project funds within the limitations set forth in this Chapter.

(i) The Executive Director may approve amendments to a Household commitment contract, except amendments to extend the contract term of a Household Assistance contract by more than 12 months.

§26.25. Amy Young Barrier Removal Program Household Eligibility Requirements.

(a) At least one Household member shall meet the definition of Persons with Disabilities.

(b) The assisted Household must be qualified as Low-Income.

(c) The assisted Household's liquid assets shall not exceed \$25,000. Liquid assets are considered to be cash deposited in checking or savings accounts, money markets, certificates of deposit, mutual funds, or brokerage accounts; the net value of stocks or bonds that may be easily converted to cash; and the net cash value calculated utilizing the appraisal district's market value for any real property that is not a principal residence. Funds in tax deferred accounts for retirement or education savings, including but not limited to Individual Retirement Accounts, 401(k)s, 529 plans, and whole life insurance policies are excluded from the liquid assets calculation.

(d) The Household may be ineligible for the program if there is debt owed to the State of Texas, including a tax delinquency; a child support delinquency; a student loan default; or any other delinquent debt owed to the State of Texas.

§26.26. Amy Young Barrier Removal Program Property Eligibility Requirements.

(a) Owner-occupied homes are eligible for Program assistance. In owner-occupied homes, the owner of record must reside in the home as their permanent residence unless otherwise approved by the Department. If the property is family-owned and the owner of record is deceased or not a Household member, the Department may deem the property renter-occupied unless satisfactory documentation is provided to the Department that confirms otherwise.

(b) Certain rental units are eligible for Program assistance and must meet the following requirements:

(1) In rental units, all Household occupants, including the Person with Disability, must be named on the Program intake application and household income certification.

(2) The owner of record for the property shall provide a statement allowing accessibility modifications to be made to the property.

(c) The following rental properties are ineligible for Program assistance:

(1) Property that is or has been developed, owned, or managed by that Administrator or an Affiliate;

(2) Rental units in properties that are financed with any federal funds or that are subject to 10 TAC Chapter 1, Subchapter B, §1.206 (relating to Applicability of the Construction Standards for Compliance with §504 of the Rehabilitation Act of 1973);

(3) Rental units that have substandard and unsafe conditions identified in the initial inspection. Program funds may not be used to correct substandard or unsafe conditions in rental units, but may be used for accessibility modifications only after the substandard and unsafe conditions have been corrected at the property owner's expense; or

(4) Rental units owned by a property owner who is delinquent on property taxes associated with the property occupied by the Household.

§26.27. Amy Young Barrier Removal Program Construction Requirements.

(a) Inspections.

(1) Initial inspection arranged by the Administrator is required and must identify the accessibility modifications needed by the

Person with Disability; assess and document the condition of the property; and identify all deficiencies that constitute life-threatening hazards and unsafe conditions.

(2) Final inspection arranged by the Administrator is required and must verify, assess, and document that all construction activities have been repaired, replaced, and/or installed in a professional manner consistent with all applicable building codes and Program requirements, and as required in the Work Write-Up as described in subsection (e) of this section.

(b) A Manufactured Housing Unit may be eligible for Program assistance if it was constructed on or after January 1, 1995. The Department may allow Manufactured Housing Units older than January 1, 1995, to receive only exterior accessibility modifications (i.e., ramps, handrails, concrete flatwork) as long as the Administrator can verify that the unit itself will be free of hazardous and unsafe conditions.

(c) Construction standards.

(1) Administrator must follow all applicable sections of local building codes and ordinances, pursuant to Section 214.212 of the Local Government Code. Where local codes do not exist, the 2015 International Residential Code (IRC), including Appendix J for Existing Buildings and Structures, is the applicable code for the Program.

(2) Accessibility modifications shall be made with consideration to 2010 American Disability Act (ADA) Standards, but may vary from the ADA Standards in order to meet specific accessibility needs of the household as requested and agreed to by the assisted household.

(3) Administrators must adhere to Chapter 21 of this title, (relating to Minimum Energy Efficiency Requirements for Single Family Construction Activities).

(4) Administrators and subcontractors must honor a twelve-month warranty on all completed items in their scope of work.

(d) Life-threatening hazards and unsafe conditions.

(1) Administrators may make repairs to eliminate life-threatening hazards and correct unsafe conditions in the Single-Family Housing as long as no more than 25% of the Project Hard Costs budget is utilized for this purpose, unless otherwise approved by the Department.

(2) Life-threatening hazards and unsafe conditions include, but are not limited to: faulty or damaged electrical systems; faulty or damaged gas-fueled systems; faulty, damaged or absent heating and cooling systems; faulty or damaged plumbing systems, including sanitary sewer systems; faulty, damaged or absent smoke, fire and carbon monoxide detection/alarm systems; structural systems on the verge of collapse or failure; environmental hazards such as mold, lead-based paint, asbestos or radon; serious pest infestation; absence of adequate emergency escape and rescue openings and fire egress; and the absence of ground fault circuit interrupters (GFCI) and arc fault circuit interrupters (AFCI) in applicable locations.

(3) If the work write-up addresses any of the following line items, the percentage of Project Hard Costs devoted to eliminating substandard, unsafe conditions may only exceed 25% by the amount of the following line item's cost: emergency escape, rescue openings and fire egress; ground fault circuit interrupters (GFCI); arc fault circuit interrupters (AFCI); and smoke, fire, and carbon monoxide detection/alarm systems. The combination of these line items plus the correction of any other unsafe conditions cannot exceed 40% of Project Hard Costs budget.

(4) All areas and components of the Single-Family Housing Unit must be free of life-threatening hazards and unsafe conditions at project completion.

(e) Work-Write Ups. The Department shall review work-write ups (also referred to as "scope of work") and cost estimates prior to the Administrator soliciting bids.

(f) Bids. The Department shall review all line item bids Administrator selects for award prior to the commencement of construction. Lump sum bids will not be accepted.

(g) Change orders. An Administrator seeking a change order must obtain written Department approval prior to the commencement of any work related to the proposed change. Failure to get prior Departmental approval may result in disallowed costs.

§26.28. Amy Young Barrier Removal Program Project Completion Requirements.

(a) The Administrator must complete all construction activities prior to the expiration of the Household Assistance Contract and the Administrator must submit the Project and Administrative Draw Request, with required supporting documentation, in the Housing Contract System for reimbursement by the Department not more than 60 calendar days after expiration of the Household Assistance Contract.

(b) The Administrator must submit evidence with the final Draw that the builder has provided a one-year warranty specifying at a minimum that materials and equipment used by the contractor will be new and of good quality unless otherwise required, the work will be free from defects other than those inherent in the work as specified, and the work will conform to the requirements of the contract documents.

(c) The Administrator must provide the Household all warranty information for work performed by the builder and any materials purchased for which a manufacturer or installer's warranty is included in the price.

(d) The Department will reimburse the Administrator in one, single payment after the Administrator's successful submission of the Project and Administrative Draw Request per Department instructions. Interim Draws may not be permitted. The Department reserves the right to delay Draw approval in the event that the Household expresses dissatisfaction with the work completed in order to resolve any outstanding conflicts between the Household and the Administrator and its subcontractors.

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

Filed with the Office of the Secretary of State on March 15, 2024.

TRD-202401164

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: April 28, 2024

For further information, please call: (512) 483-1148



TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 67. AUCTIONEERS

16 TAC §§67.21, 67.40, 67.65, 67.66, 67.70, 67.71, 67.90

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 67, §§67.21, 67.40, 67.65, 67.70, and 67.71, and proposes new rules at §67.66 and §67.90, regarding the Auctioneers program. These proposed changes are referred to as the "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 67, implement Texas Occupations Code, Chapter 1802, Auctioneers.

The proposed rules implement House Bill (HB) 4416, 88th Legislature, Regular Session (2023). This bill addresses concerns identified in the department's study of the Auctioneers program mandated by HB 1560, 87th Legislature, Regular Session (2021). Notably, HB 4416 removes the requirement that an associate auctioneer be employed by a licensed auctioneer. Additionally, the bill enhances consumer safety by requiring the auctioneer and client to sign a written contract and agree in writing to an inventory of property before an auction. HB 4416 also changes provisions in Chapter 1802 regarding the Auctioneer Education and Recovery Fund to raise the cap on claims against an auctioneer arising from a single auction, and to allow an aggrieved party to receive greater compensation for claims against an auctioneer.

The proposed rules also incorporate changes and updates recommended by the department to accurately reflect the current operation of auctioneer regulation.

Advisory Board Recommendations

The proposed rules were presented to and discussed by the Auctioneer Advisory Board at its meeting on March 5, 2024. The Advisory Board did not make any changes to the proposed rules. The Advisory Board voted and recommended that the proposed rules be published in the *Texas Register* for public comment.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §67.21(2) to remove the requirement that an associate auctioneer be employed by a licensed auctioneer.

The proposed rules amend §67.40(b) to change the date on which the department will determine the amount necessary to replenish the Auctioneer Education and Recovery Fund.

The proposed rules amend §67.40(d) to state that if an auctioneer owes an aggrieved party more than \$15,000 for claims related to a single auction, the auctioneer must pay any amount over \$15,000.

The proposed rules amend §67.40(e) to increase the total maximum payment from the recovery fund for claims arising from a single auction to \$100,000.

The proposed rules add §67.40(f) to state that any damages arising from a single auction in excess of \$100,000 must be prorated among all aggrieved parties, with damages in excess of \$100,000 to be paid directly by the auctioneer.

The proposed rules reletter the previous §67.40(f) to §67.40(g).

The proposed rules reletter the previous §67.40(g) to §67.40(h).

The proposed rules add §67.40(i) to state that the department may revoke a person's auctioneer or associate auctioneer li-

cense if a payment from the recovery fund has been made and the licensee has not repaid the department.

The proposed rules reletter the previous §67.40(h) to §67.40(j).

The proposed rules add §67.65(d) to state that the presiding officer must consider where potential advisory board members reside when making appointments to the advisory board.

The proposed rules add §67.66(a) to state that advisory board members serve six-year terms that expire on September 1 of odd-numbered years.

The proposed rules add §67.66(b) to state that advisory board members may not serve more than two consecutive terms.

The proposed rules add §67.66(c) to state that, in the event of a vacancy on the advisory board, the presiding officer of the commission, after receiving the commission's approval, must appoint a replacement to serve the remainder of the vacated term.

The proposed rules add §67.70(b)(4) to state that an auctioneer must have a written contract in place, with all terms and signed by both the auctioneer and client, before an auction.

The proposed rules add §67.70(b)(5) to state that before an auction, the auctioneer and client must agree in writing to an itemized inventory of property on a form prescribed by the department.

The proposed rules renumber the previous §67.70(b)(4) to §67.40(b)(6).

The proposed rules renumber the previous §67.70(b)(5) to §67.40(b)(7) and add "inventories of property" to the list of documents auctioneers must retain.

The proposed rules renumber the previous §67.70(b)(6) to §67.40(b)(8).

The proposed rules renumber the previous §67.70(b)(7) to §67.40(b)(9).

The proposed rules renumber the previous §67.70(b)(8) to §67.40(b)(10).

The proposed rules renumber the previous §67.70(b)(9) to §67.40(b)(11).

The proposed rules amend §67.71(a) to remove the requirement that an associate auctioneer be employed by a licensed auctioneer.

The proposed rules add §67.90 to state that a violation of the laws, rules, or an order of the department's executive director or commission are grounds for administrative penalties or license sanctions.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rule is in effect, enforcing or administering the proposed rule does not have foreseeable implications relating to costs or revenues of state or local governments.

LOCAL EMPLOYMENT IMPACT STATEMENT

Because Mr. Couvillon has determined that the proposed rules will not affect a local economy, the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

PUBLIC BENEFITS

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, the public will benefit from increased protection of consumers who do business with an auctioneer, more thorough documentation of auction-related transactions, and eliminating a license barrier for associate auctioneers. Increased cap amounts on claims against an auctioneer arising from a single auction will offer a greater opportunity for consumers to be fully compensated for any losses suffered. New rules requiring a written, signed contact in addition to a written, itemized inventory of property before an auction will equip consumers with clear evidence of the parameters of their auction. The removal of the requirement that an associate auctioneer have an employee-employer relationship with a sponsoring auctioneer should allow those attempting to enter the industry more and easier access to licensees.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there could be additional costs to persons who are required to comply with the proposed rules. As the proposed rules raise the total amount that can be paid from the Auctioneer Education and Recovery Fund for all claims arising from a single auction from \$30,000 to \$100,000, this could result in an increase in renewal fees required to be paid by license holders in order to replenish the Fund. While we cannot presently provide an estimate of the potential fee increase, Chapter 1802 of the Occupations Code caps this number at \$50.

Additionally, the proposed rules require an auctioneer to provide a written contract and an itemized inventory of property when agreeing to provide services to a client. This requirement should not result in more than a negligible cost to license holders.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Because the agency has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules have a fiscal note that imposes a cost on regulated persons. However, because the proposed rules are necessary to implement legislation, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules will be in effect, the agency has determined the following:

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.

3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.

4. The proposed rules require an increase or decrease in fees paid to the agency. In years when the Auctioneer Education and Recovery Fund is below the statutory minimum of \$350,000, the department will be required to increase license renewal fees based on the amount required to be replenished.

5. The proposed rules create new regulations. The proposed rules add provisions required by HB 4416 regarding the need for a written contract and inventory of property.

6. The proposed rules expand, limit, or repeal an existing regulation. The regulation regarding license requirements for associate auctioneers has been expanded to allow for applicants to have a greater opportunity to become licensed. Regulations regarding the Auctioneer Education and Recovery Fund have been expanded to increase the potential amount of recovery by aggrieved parties. Regulations regarding recordkeeping have been expanded to now include written contracts and inventories of property to be sold.

7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.

8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rules and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

PUBLIC COMMENTS

Comments on the proposed rules may be submitted electronically on the department's website at <https://ga.tdlr.texas.gov:1443/form/gcerules>; by facsimile to (512) 475-3032; or by mail to Monica Nuñez, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 1802, which authorize the Texas Commission of Licensing and Regulation, 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 proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 1802. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is House Bill 4416, 88th Legislature, Regular Session (2023).

§67.21. License Requirements--Associate Auctioneers.

An applicant for licensure as an associate must:

(1) submit a completed application along with required fees;

(2) ~~work~~ ~~[be employed]~~ under the direct supervision of an auctioneer licensed under this chapter; and

(3) either be a citizen of the United States or a legal alien.

§67.40. Auctioneer Education and Recovery Fund.

(a) (No change.)

(b) The necessity for assessing the fee will be determined by the department based on the Fund balance on each August ~~[December]~~ 31st. The fee shall be paid in addition to the renewal fee. The renewal notice sent by the department will reflect the fee due to the Fund.

(c) (No change.)

(d) If the department determines, either through an ~~[with the]~~ agreement ~~with~~ ~~[of]~~ the auctioneer ~~[and claimant]~~ or after ~~[at]~~ a hearing held on a disputed amount, that the auctioneer owes to a single ~~[the]~~ aggrieved party ~~[person]~~ damages greater than the maximum of \$15,000 for all claims arising from a single auction ~~[allowed under the Act]~~, the auctioneer must pay the amount not paid by the department to the aggrieved party. ~~[If the department determines that the auctioneer owes damages to more than one aggrieved person arising out of one auction at one location, and the sum of all damages owed exceeds \$30,000, the department shall prorate \$30,000 from the Fund among the aggrieved persons, and the auctioneer must pay the amount not paid to each of the aggrieved persons.]~~

(e) The total payment from the Fund of claims against an auctioneer arising from a single auction may not exceed \$100,000 ~~[\$30,000]~~. If additional claims are filed before the auctioneer has reimbursed the Fund and repaid any amounts due an aggrieved party, the department shall hold a hearing to determine if the additional claims must be satisfied by the auctioneer before the department issues or renews a license, whether probated or not.

(f) If there is a determination, either by the department or after a hearing, that the auctioneer owes damages to more than one aggrieved party arising out of one auction at one location, and the sum of all damages owed exceeds \$100,000, the department shall prorate \$100,000 from the Fund among the aggrieved parties, and the auctioneer must pay the amount not paid to each of the aggrieved parties.

(g) [(#)] If a claim is paid against an auctioneer, and the auctioneer cannot immediately reimburse the Fund, the executive director may allow the auctioneer to sign an agreement with the department to reimburse the Fund at the applicable rate described below plus the interest accrued on the unpaid principal during the prior month at the rate of 8 percent per year.

(h) [(#)] If an amount is due an aggrieved party, and the auctioneer cannot immediately pay the aggrieved party, the executive director may allow the auctioneer to sign an agreement with the party to reimburse the aggrieved party at the applicable rate described below plus the interest accrued on the unpaid principal during the prior month at the rate of 8 percent per year.

(i) The department may revoke, or deny the renewal of, the license of an auctioneer or associate auctioneer if:

(1) the department makes a payment from the Fund arising out of the actions of the license holder; or

(2) the license holder has not repaid the department the entire amount paid from the Fund, including interest.

(j) [(#)] Reimbursement of the principal owed is to be paid in monthly installments determined by agreement between the depart-

ment and the auctioneer with consideration given to input from any aggrieved party. If an agreement is not reached, monthly installments shall be determined as a percentage of the initial principal amount according to the following schedule:

- (1) \$0.01 - \$500.00--20%
- (2) \$500.01 - \$1,000--10%
- (3) \$1,000.01 - \$3,000.00--5%
- (4) \$3,000.01 and over--3%

§67.65. *Auctioneer Advisory Board.*

(a) - (c) (No change.)

(d) In appointing advisory board members, the presiding officer of the commission shall consider the geographical diversity of the members.

§67.66. *Terms; Vacancies.*

(a) Members of the advisory board serve six-year terms. The terms expire on September 1st of each odd-numbered year.

(b) Members may not serve more than two consecutive terms.

(c) If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's approval, shall appoint a replacement who meets the qualifications for the vacant position to serve for the remainder of the term.

§67.70. *Auctioneer Standards of Practice.*

(a) (No change.)

(b) Recordkeeping

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

(4) An auctioneer who agrees to provide services to a party shall provide a written contract with the terms of the agreement. The contract and all terms must be agreed and signed before any auction occurs.

(5) Each contract for the services of an auctioneer must include information required by the commission by rule.

(6) Before any auction, the auctioneer and party must agree in writing to an itemized inventory of property to be sold or offered for sale by the auctioneer at auction. An amendment to the inventory must be in writing and signed by both parties.

(7) [(4)] The records for each auction must state the name(s) and address of the owners of the property auctioned, the date of the sale, the name of the auctioneer and clerk of the sale, the gross proceeds, the location and account number of the auctioneer's trust or escrow account, an itemized list of all expenses charged to the consignor or seller, a list of all purchasers at the auction and a description and selling price for each item sold.

(8) [(5)] The auctioneer shall keep, as part of the records for each auction, all documents relating to the auction.^[3] These documents shall include, but are not limited to, settlement sheets, written contracts, inventories of property, copies of advertising and clerk sheets.

(9) [(6)] These documents include records and documents online.

(10) [(7)] Each licensed auctioneer must:

(A) (No change.)

(B) Deposit all proceeds from an auction into the trust or escrow account within seventy-two (72) hours of the auction unless

the owner or consignor of the property auctioned is paid immediately after the sale or the written contract stipulates other terms, such as sight drafts.

(C) - (D) (No change.)

(11) [(8)] A licensed auctioneer shall cooperate with the department in the performance of an investigation. This includes, but is not limited to, responding to requests from the department, including producing requested documents or other information, within thirty (30) days of request.

(12) [(9)] The failure of a licensed auctioneer to timely pay a consignor may subject the licensed auctioneer to a claim under the Auctioneer Education and Recovery Fund.

(c) (No change.)

§67.71. *Requirements--Sponsoring Auctioneer.*

(a) An Associate Auctioneer must work under the direct supervision of a licensed Auctioneer to maintain licensure [There must be a legitimate employee-employer relationship between an associate auctioneer and the sponsoring auctioneer or between the associate and an auction company operated by a licensed auctioneer that employs the sponsoring auctioneer].

(b) - (d) (No change.)

§67.90. *Administrative Penalties and Sanctions.*

If a person or entity violates any provision of Texas Occupations Code, Chapter 1802, this chapter, or any rule or order of the executive director or commission, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both in accordance with the provisions of Texas Occupations Code, Chapter 1802; Texas Occupations Code, Chapter 51; and any associated rules.

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

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Doug Jennings

General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: April 28, 2024

For further information, please call: (512) 475-4879



CHAPTER 114. ORTHOTISTS AND PROSTHETISTS

16 TAC §§114.1, 114.70, 114.90

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 114, §§114.1, 114.70, and 114.90 regarding the Orthotists and Prosthetists program. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 114, implement Texas Occupations Code, Chapter 605, Orthotists and Prosthetists.

The proposed rules are necessary to implement Senate Bill (SB) 490, 88th Legislature, Regular Session, which requires certain health care providers to provide itemized bills. SB 490 added

new Chapter 185 to the Health and Safety Code to address this issue. The term "health care provider" is generally defined under Health and Safety Code §185.001(2) to include a facility licensed, certified, or otherwise authorized to provide health care services or supplies in this state in the ordinary course of business. Section 185.003 requires appropriate licensing authorities to take disciplinary action against providers who violate the requirements of Chapter 185 as if the provider violated an applicable licensing law.

The Department regulates numerous health care professions. Because the definition of term "health care provider" is restricted in the bill to regulated facilities, however, SB 490 appears to directly impact only those health care professions for which facilities are regulated. The Department regulates the professions of orthotics and prosthetics under Occupations Code Chapter 605, the Orthotics and Prosthetics Act (the Act). Under §605.260 of the Act, orthotic and prosthetic facilities are required to be accredited by the Department. Because these accredited facilities constitute health care providers under Health and Safety Code §185.001(2), the Department is required to treat a violation by an accredited facility of the itemized billing requirements as a violation of the Department's licensing statutes. The proposed rules therefore provide that accredited facilities must comply with Health and Safety Code, Chapter 185, and that failure to do so is a basis for disciplinary action under both the Act and the enforcement provisions of Occupations Code, Chapter 51.

In addition to implementing SB 490, the proposed rules make non-substantive changes for purposes of clarity and consistency with the format of other rule chapters administered by the Department. These changes include the addition of clarifying language concerning the authority for and applicability of the rules, the addition and revision of headings, and the deletion of unnecessary language.

Advisory Board Recommendations

The proposed rules were presented to and discussed by the Orthotists and Prosthetists Advisory Board at its meeting on February 27, 2024. The Advisory Board made the following changes to the proposed rules: language was added to the new subsection (e) of the rule at 16 TAC §114.70 to highlight key statutory requirements for itemized billing. The Advisory Board voted and recommended that the proposed rules with changes be published in the *Texas Register* for public comment.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §114.1, Authority. The heading is modified to "Authority and Applicability" and the rule is divided into two subsections to separately address each topic. The existing rule text is incorporated into new subsection (a) and language is inserted to clarify the statutory authority for the rule chapter and to include a reference to the new Health and Safety Code Chapter 185. New subsection (b) is added to clarify that the rules in 16 TAC, Chapter 60, Procedural Rules of the Commission and the Department, and the rules in 16 TAC, Chapter 100, General Provisions for Health-Related Programs, apply to the Orthotists and Prosthetists program in addition to the rules in Chapter 114.

The proposed rules amend §114.70, Responsibilities of Licensees. The heading is modified to "Responsibilities of Licensees and Accredited Facilities" to more accurately reflect the scope of the rule. New subsection (e) is inserted to set forth the requirement of accredited facilities to comply with Health and Safety Code Chapter 185 and that failure to do so is a basis

for enforcement action. Paragraphs (e)(1) through (e)(3) outline the required components of the bills.

The proposed rules amend §114.90, Professional Standards and Basis for Disciplinary Action. A new subheading, "Enforcement Actions," is added to subsection (a) to improve readability. Redundant verbiage concerning the authority for the rule is removed. Clarifying changes are made to the syntax of subsections (a)(1) and (a)(2). Subsection (a)(2) is revised to reflect that the sources of the Department's enforcement authority under Chapter 114 may include a variety of statutes not specifically listed, as reflected in the revised §114.1. Lastly, a new subheading, "Fraud, misrepresentation, or concealment" is added to subsection (b) to improve readability.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rule is in effect, enforcing or administering the proposed rule does not have foreseeable implications relating to costs or revenues of state or local governments.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Couvillon has determined that the proposed rules will not affect a local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefits will be the provision of additional transparency for consumers concerning services billed and the clarification of the existing rules.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Because the agency has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the pro-

posed rules. For each year of the first five years the proposed rules will be in effect, the agency has determined the following:

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rules do not require an increase or decrease in fees paid to the agency.
5. The proposed rules do not create a new regulation.
6. The proposed rules expand, limit, or repeal an existing regulation. The proposed rules expand a regulation by adding compliance with the itemized billing requirements of new Health and Safety Code, Chapter 185, as a stated responsibility of accredited facilities, and non-compliance with these requirements as a basis for disciplinary action.
7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.
8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rules and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

PUBLIC COMMENTS

Comments on the proposed rules may be submitted electronically on the Department's website at <https://ga.tdlr.texas.gov:1443/form/gcerules>; by facsimile to (512) 475-3032; or by mail to Shamica Mason, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 605, which authorize the Texas Commission of Licensing and Regulation, 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 proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 605. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is Senate Bill 490, 88th Legislature, Regular Session (2023).

§114.1. Authority and Applicability.

(a) This chapter is promulgated under the authority of Texas Occupations Code, Chapters 51 and 605. Specific provisions within

this chapter also implement the statutory requirements under Texas Occupations Code, Chapters 53, 112, and 116; Texas Health and Safety Code, Chapter 185; and other applicable statutes.

(b) In addition to this chapter, the rules under 16 TAC Chapter 60, Procedural Rules of the Commission and the Department, and 16 TAC Chapter 100, General Provisions for Health-Related Programs, are applicable to the Orthotists and Prosthetists program.

§114.70. Responsibilities of Licensees and Accredited Facilities.

(a) Persons to whom a license has been issued shall return the license to the department upon the surrender, revocation or suspension of the license.

(b) All applicants, licensees, registrants and accredited facilities shall notify the department of any change(s) of name or mailing address. Accredited facilities shall notify the department of any change(s) in the facility name, the name of the safety manager and the practitioner in charge, the mailing address and physical address. Written notification to the department and the appropriate fee shall be submitted to the department within thirty (30) days after a change is effective. Changes in a facility's physical location or ownership require a new application for accreditation.

(c) Name changes. Before the department will issue a new license certificate and identification card, notification of name changes must be received by the department. Notification shall include a copy of a marriage certificate, court decree evidencing the change, or a Social Security card reflecting the licensee's or registrant's new name.

(d) Consumer complaint information notices. All licensees, registrants and accredited facilities, excluding facilities that a licensee visits to treat patients, such as hospitals, nursing homes or patients' homes, shall prominently display a consumer complaint notice or sign in a waiting room or other area where it shall be visible to all patients. Lettering shall be at least one-fourth inch, or font size 30, in height, with contrasting background, containing the department's name, website, mailing address, and telephone number for the purpose of directing complaints to the department regarding a person or facility regulated or requiring regulation under the Act. Script or calligraphy prints are not allowed. The notice shall be worded as specified by the department.

(e) Itemized billing. A facility must provide itemized billing in accordance with Health and Safety Code, Chapter 185. Failure of a facility to do so is a ground for enforcement action under Occupations Code, Chapters 51 and 605, and these rules. The itemized bill must, in addition to any other requirement of Health and Safety Code, Chapter 185, include:

(1) a plain language description of each distinct health care service or supply provided to the patient;

(2) if the facility sought or is seeking reimbursement from a third party, any billing code submitted to the third party and the amounts billed to and paid by that third party; and

(3) the amount due from the patient for each service and supply provided to the patient.

§114.90. Professional Standards and Basis for Disciplinary Action.

(a) Enforcement Actions. [General. This section is authorized under the Act and Chapter 51 of the Texas Occupations Code.]

(1) If a person or entity violates any provision of Texas Occupations Code, Chapters 51 or [.] 605, [or] any other applicable statute [provision], this chapter, or a rule or order issued by the executive director or commission, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both in accordance with the provisions of the Texas Occupations Code and the associated rules.

(2) The enforcement authority granted under Texas Occupations Code, Chapters 51 or [and] 605, any other applicable statutes, and any associated rules may be used to enforce the Texas Occupations Code and this chapter.

(b) **Fraud, misrepresentation, or concealment.** A license, registration, or facility accreditation may be denied, revoked, suspended, probated, reprimanded, or an administrative penalty may be imposed when a license is obtained by fraud, misrepresentation, or concealment of a material fact, which includes, but is not limited to, the following:

(1) committing fraud, misrepresentation, or concealment of a material fact submitted with an application or renewal for licensure, registration, or facility accreditation;

(2) committing fraud, misrepresentation, or concealment of a material fact submitted with continuing education requirements;

(3) impersonating or acting as a proxy for an examination candidate;

(4) impersonating or acting as a proxy for a licensee or registrant at a continuing education activity;

(5) using a proxy to take an examination or to participate in a continuing education activity;

(6) providing false or misleading information to the department regarding an inquiry by the department; or

(7) committing other fraud, misrepresentation, or concealment of a material fact submitted to the board or department.

(c) **Fraud or deceit concerning services provided.** A license, registration, or facility accreditation may be denied, revoked, suspended, probated, reprimanded, or an administrative penalty may be imposed for fraud or deceit concerning services provided, which includes, but is not limited to, the following:

(1) placing or causing to be placed, false, misleading, or deceptive advertising;

(2) making or allowing false, misleading, or deceptive representations concerning the services or products provided or which have been provided;

(3) making or allowing false, misleading, or deceptive representations on an application for employment;

(4) using or allowing a person to use a license or registration for any fraudulent, misleading, or deceptive purpose;

(5) knowingly employing or professionally associating with a person or entity who is providing prosthetic or orthotic services and is not licensed or accredited as required by the Act or this chapter;

(6) forging, altering, or falsifying a physician's or health care professional's order;

(7) delivering prosthetic or orthotic services or products through means of misrepresentation, deception, or subterfuge;

(8) accepting or paying, or agreeing to pay or accept illegal remuneration for the securing or soliciting of patients as prohibited by Texas Occupations Code, §102.001;

(9) making or filing, or causing another person to make or file, a report or record that the licensee knows to be inaccurate, incomplete, false, or illegal;

(10) practicing with an expired, suspended, or revoked license or registration, or in a facility that is required to be accredited and has an expired, suspended, or revoked accreditation;

(11) persistently or flagrantly overcharging a client, patient, or third party;

(12) persistently or flagrantly over treating a client or patient;

(13) violation of the Act, this chapter, or an order issued by the executive director or the commission;

(14) taking without authorization medication, supplies, equipment, or property belonging to a patient; and

(15) other fraud or deceit concerning services provided.

(d) **Unprofessional or unethical conduct.** A license, registration, or facility accreditation may be denied, revoked, suspended, probated, reprimanded, or an administrative penalty may be imposed for unprofessional or unethical conduct, as defined in subsections (b) and (c). Other action that may cause a license, registration, or facility accreditation to be denied, not renewed, revoked, suspended, or that may cause an administrative penalty to be imposed include, but are not limited to:

(1) discriminating based on race, color, national origin, religion, gender, age, or disability in the practice of prosthetics or orthotics;

(2) having surrendered a license to the department or the licensing authority of another state, territory, or country to avoid disciplinary action or prosecution;

(3) having a license revoked or suspended, having had other disciplinary action taken against the applicant, or having had the application for a license refused, revoked, or suspended by the department or the licensing authority of another state, territory, or country;

(4) engaging in conduct that state, federal, or local law prohibits;

(5) failing to maintain acceptable standards of prosthetics or orthotics practices as set forth by the department rules;

(6) being unable to practice prosthetics or orthotics with reasonable skill, and safety to patients, due to illness or use of alcohol, drugs, narcotics, chemicals or other types of material or from mental or physical conditions;

(7) having treated or agreed to treat human ailments by means other than prosthetic and orthotic treatments appropriate to or within the scope of the person's license;

(8) failing to supervise and maintain supervision of clinical or technical personnel, licensed or unlicensed, in compliance with the Act and this chapter, or failing to provide on-site supervision for an accredited facility, if designated as the practitioner in charge of the facility;

(9) providing prosthetic or orthotic services or products in a way that the person knows, or with the exercise of reasonable diligence should know violates the Act or this chapter;

(10) failing to assess and evaluate a patient's status;

(11) providing or attempting to provide services for which the licensee is unprepared through education or experience;

(12) delegating functions or responsibilities to an individual lacking the ability, knowledge, or license/registration to perform the function or responsibility;

(13) revealing confidential information concerning a patient or client except where required or allowed by law;

(14) failing to obtain accreditation for a facility that must be accredited or failing to renew the accreditation of a facility that must be accredited;

(15) assaulting or causing, permitting or allowing physical or emotional injury or impairment of dignity or safety to the patient or client;

(16) making abusive, harassing, or seductive remarks to a patient, client, or co-worker in the workplace;

(17) engaging in sexual contact as defined by the Penal Code, §21.01, with a patient or client as the result of the patient or client relationship;

(18) failing to follow universal precautions or infection control standards as required by the Health and Safety Code, Chapter 85, Subchapter I;

(19) submitting false documentation or information to the department relating to continuing education;

(20) failing or refusing to provide acceptable documentation of continuing education reported to the department for renewal if selected for an audit, or if specifically requested by the department;

(21) failing to cooperate with the department during an investigation of a complaint by not furnishing required documentation or responding to a request for information or a subpoena issued by the department or its authorized representative;

(22) interfering with an investigation or disciplinary proceeding by misrepresentation of facts or by use of threats, retaliation or harassment against anyone;

(23) fitting a prosthesis or orthosis without an order;

(24) fitting a prosthesis or orthosis inaccurately or modifying the order without authorization from the prescribing physician or health care professional;

(25) providing orthotic care in a facility that is not accredited in orthotics that is required to be accredited;

(26) providing prosthetic care in a facility that is not accredited in prosthetics that is required to be accredited;

(27) failing to truthfully respond in a manner that fully discloses all information in an honest, materially responsive and timely manner to a complaint filed with or by the department;

(28) failing to report a known violation of the Act or this chapter to the department;

(29) failing to comply with an order issued by the executive director or the commission; and

(30) other unprofessional or unethical conduct.

(e) Gross negligence or malpractice. A license, registration, or facility accreditation may be denied, revoked, suspended, probated, reprimanded, or an administrative penalty may be imposed for gross negligence or malpractice, which includes, but is not limited to, the following.

(1) Performing an act or omission constituting gross neglect, such as conduct involving malice, willfulness or wanton and reckless disregard of the rights of others;

(2) Performing an act or omission constituting malpractice, such as:

(A) failing to perform services or provide products for which compensation has been received or failing to perform services

or provide products with reasonable care, skill, expedience, and faithfulness;

(B) failing to do that which a person of ordinary prudence would have done under the same or similar circumstances, or doing that which a person of ordinary prudence would not have done under the same or similar circumstances.

(f) Interference with an investigation. A license, registration, or facility accreditation may be denied, revoked, suspended, probated, reprimanded, or an administrative penalty may be imposed for interference with a department investigation by the misrepresentation of facts to the department or its authorized representative or by the use of threats or harassment against any person.

(g) Surrender of license and formal disciplinary action.

(1) When a licensee or accredited facility has offered the surrender of the license or accreditation after a complaint has been filed, the department shall consider whether to accept the surrender of the license.

(2) Surrender of a license or accreditation without acceptance by the department does not deprive the department of jurisdiction to prosecute an alleged violation of the Act or this chapter.

(3) When the department accepts a surrender while a complaint is pending, that surrender is deemed to be the result of a formal disciplinary action and an order shall be prepared accepting the surrender and reflecting this fact.

(4) A license surrendered and accepted may not be reinstated; however, a person may apply for a new license in accordance with the Act and this chapter.

(h) Frivolous complaints. A license, registration, or facility accreditation may be denied, revoked, suspended, probated, reprimanded, or an administrative penalty may be imposed for filing a complaint with the department that is frivolous or made in bad faith.

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

Filed with the Office of the Secretary of State on March 18, 2024.

TRD-202401174

Doug Jennings

General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: April 28, 2024

For further information, please call: (512) 463-7750



TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 556. NURSE AIDES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §§556.2 - 556.9; new §§556.10 - 556.14; and the repeal of §§556.10 - 556.13, and 556.100.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement two bills from the 88th Texas Legislature, Regular Session, 2023. House Bill (H.B.) 4123 relates to HHSC obtaining criminal history information from the Federal Bureau of Investigation (FBI) and Texas Department of Public Safety for certified nurse aides (CNA). Senate Bill (S.B.) 681 relates to the Texas Occupations Code, Chapter 53, exemption for HHSC Long-Term Care Regulation (LTCR)-regulated Certified Nurse Aides. This rule project also proposes revisions related to the Texas Unified Licensure Information Portal (TULIP), with the purpose of changing from a paper process to a digital process. This proposal also makes non-substantive edits to update references in the rules.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §556.2 revises definitions for nurse aide rules. Paragraph (1) revises the definition of "abuse" to be consistent with the definition in other rule chapters. Paragraph (33) adds a definition for "online portal."

The proposed amendment to §556.3 implements S.B. 681 relating to criminal convictions, updates the rule to reflect the current automated process using TULIP, and updates references in the rule.

The proposed amendment to §556.4 updates the rule to reflect the current automated process using TULIP and updates references in the rule.

The proposed amendment to §556.5 makes a non-substantive grammar update to the rule.

The proposed amendment to §556.6 implements S.B. 681 relating to criminal convictions, implements H.B. 4123 relating to FBI criminal history, updates the rule to reflect the current automated process using TULIP, updates a reference in the rule, and makes a non-substantive edit to improve readability.

The proposed amendment to §556.7 updates the rule to reflect the current automated process using TULIP.

The proposed amendment to §556.8 updates the rule to reflect the current automated process using TULIP and updates references in the rule.

The proposed amendment to §556.9 implements H.B. 4123 relating to FBI criminal history, updates the rule to reflect the current automated process using TULIP, and makes a non-substantive edit to improve readability.

Proposed new §556.10 implements S.B. 681 relating to criminal convictions and H.B. 4123 relating to FBI criminal history.

The proposed repeal of §556.10 allows the rule to be renumbered as §556.11, with revisions for non-substantive grammar edits and updates to the rule to reflect the current automated process using TULIP.

Proposed new §556.11 allows §556.10 to be renumbered as §556.11 and makes non-substantive grammar edits and updates to the rule to reflect the current automated process using TULIP.

The proposed repeal of §556.11 allows the rule to be renumbered as §556.12 with non-substantive grammar edits.

Proposed new §556.12 allows §556.11 to be renumbered as §556.12 and makes non-substantive grammar edits.

The proposed repeal of §556.12 allows the rule to be renumbered as §556.13, with non-substantive grammar edits.

Proposed new §556.13 allows §556.12 to be renumbered as §556.13 and makes non-substantive grammar edits.

The proposed repeal of §556.13 allows the rule to be renumbered as §556.14, with revisions for non-substantive grammar edits and language clarifying that a military spouse with an active nurse aide certification can print duplicate licenses and make name changes through the online portal.

Proposed new §556.14 allows §556.13 to be renumbered as §556.14 and makes non-substantive grammar edits and adds language clarifying that a military spouse with an active nurse aide certification can print duplicate licenses and make name changes through the online portal.

The proposed repeal of §556.100 relates to the end of the Nurse Aide Transition from Temporary Status rule that was in effect only during the COVID-19 public health emergency.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will create new regulations;
- (6) the proposed rules will repeal and expand existing rules;
- (7) the proposed regulations will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there could be an adverse economic effect on small businesses, micro-businesses, or rural communities.

Criminal background history (specifically, fingerprinting requirements) proposed secondary to H.B. 4123 will increase the cost for fingerprinting nurse aides (currently \$39.75).

HHSC is unable to estimate the number of small businesses, micro-businesses, or rural communities subject to the proposed rules. The projected economic impact for a small business, micro-business, or rural community is the cost to comply.

HHSC determined that alternative methods to achieve the purpose of the proposed rules for small businesses, micro-businesses, or rural communities would not be consistent with ensuring the health and safety of nursing facility residents.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Michelle Dionne-Vahalik, Associate Commissioner for Long-Term Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be protecting nursing facility residents through HHSC's ability to obtain criminal history information from the FBI and Texas Department of Public Safety for CNA applicants. This will improve the screening process to prohibit employing individuals with a criminal conviction that is a bar to employment but may have occurred in another state and align the criminal convictions used to determine bars to licensure, certification, or permitting with the convictions used to determine nursing facility employability for a LTCR-regulated CNA.

Trey Wood has also determined that for the first five years the rules are in effect, persons who are required to comply with the proposed rules may incur economic costs due to the current fee for FBI fingerprinting, which is \$39.75 per individual criminal history report. As of June 2023, there were 130,419 regulated individuals; this one-time fee only applies to individuals seeking initial certification or any nurse aides who may be subject to the fingerprinting fee seeking renewal who have not already supplied fingerprints for a criminal background check.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rachael Holden and Sandra Wiegand, Program Specialists, by email to HHSCLTCRRules@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 23R071" in the subject line.

26 TAC §§556.2 - 556.14

STATUTORY AUTHORITY

The amendments and new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; Texas Health and Safety Code §250.0035(d), which provides that the

Executive Commissioner of HHSC shall adopt rules necessary to implement §250.0035 related to the issuance and renewal of certificates of registration and the regulation of nurse aides as necessary to protect the public health and safety; and Texas Health and Safety Code, Chapter 250, which requires HHSC to maintain a Nurse Aide Registry.

The amendments and new sections, implement Texas Government Code §§411.1161, 531.0055, and 531.021; Texas Human Resources Code §32.021; and Texas Health and Safety Code §250.0035.

§556.2. Definitions.

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

(1) Abuse--Negligent or willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical or emotional harm or pain to a resident; or sexual abuse, including involuntary or nonconsensual sexual conduct that would constitute an offense under Texas Penal Code §21.08 (relating to Indecent Exposure) or Texas Penal Code, Chapter 22 (relating to Assaultive Offenses), sexual harassment, sexual coercion, or sexual assault [The willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish].

(2) Act--The Social Security Act, codified at United States Code, Title 42, Chapter 7.

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

(4) Active status--The designation given to a nurse aide listed on the NAR who is eligible to work in a nursing facility.

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

(6) Classroom training--The teaching of curriculum components through in-person instruction taught in a physical classroom location, which may include skills practice through online instruction taught in a virtual classroom location, or through an HHSC-approved computer-based training (CBT).

(7) Clinical training--The teaching of hands-on care of residents in a nursing facility under the required level of supervision of a licensed nurse, which may include skills practice prior to performing the skills through hands-on care of a resident. The clinical training provides the opportunity for a trainee to learn to apply the classroom training to the care of residents with the assistance and required level of supervision of the instructor.

(8) Competency evaluation--A written or oral examination and a skills demonstration administered by a skills examiner to test the competency of a trainee.

(9) Competency evaluation application--An HHSC form used to request HHSC approval to take a competency evaluation.

(10) Direct supervision--Observation of a trainee performing skills in a NATCEP.

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

(12) Facility--Means:

(A) a nursing facility licensed under Texas Health and Safety Code, Chapter 242;

(B) a licensed intermediate care facility for an individual with an intellectual disability or related condition licensed under Texas Health and Safety Code, Chapter 252;

(C) a type B assisted living facility licensed under Texas Health and Safety Code, Chapter 247;

(D) a general or special hospital licensed under Texas Health and Safety Code, Chapter 241; or

(E) a hospice inpatient unit licensed under Texas Health and Safety Code, Chapter 142.

(13) Facility-based NATCEP--A NATCEP offered by or in a nursing facility.

(14) General supervision--Guidance and ultimate responsibility for another person in the performance of certain acts.

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

(16) Infection control--Principles and practices that prevent or stop the spread of infections in the facility setting.

(17) Informal Review (IR)--An opportunity for a nurse aide to dispute a finding of misconduct by providing testimony and supporting documentation to an impartial HHSC staff person.

(18) Licensed health professional--A person licensed to practice healthcare in the state of Texas including:

- (A) a physician;
- (B) a physician assistant;
- (C) a physical, speech, or occupational therapist;
- (D) a physical or occupational therapy assistant;
- (E) a registered nurse;
- (F) a licensed vocational nurse; or
- (G) a licensed social worker.

(19) Licensed nurse--A registered nurse or licensed vocational nurse.

(20) Licensed vocational nurse (LVN)--An individual licensed by the Texas Board of Nursing to practice as a licensed vocational nurse.

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

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

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

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

(25) NATCEP--Nurse Aide Training and Competency Evaluation Program.

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

(27) Non-facility-based NATCEP--A NATCEP not offered by or in a nursing facility.

(28) Nurse aide--An individual who provides nursing or nursing-related services to residents in a facility under the supervision of a licensed nurse and who has successfully completed a NATCEP or has been determined competent by waiver or reciprocity and who has been issued a certificate of registration. This term does not include an individual who is a licensed health professional or a registered dietitian or who volunteers services without monetary compensation.

(29) Nurse aide curriculum--The publication titled Texas Curriculum for Nurse Aides in Long Term Care Facilities, developed by HHSC.

(30) Nurse Aide Registry (NAR)--A listing of nurse aides, maintained by HHSC, that indicates if a nurse aide has active status, revoked status, or is unemployable based on a finding of having committed an act of abuse, neglect, or misappropriation of resident property.

(31) Nurse aide training and competency evaluation program (NATCEP)--A program approved by HHSC to train and evaluate an individual's ability to work as a nurse aide in a nursing facility.

(32) Nurse aide training and competency evaluation program (NATCEP) application--A HHSC form used to request HHSC initial approval to offer a NATCEP, to renew approval to offer a NATCEP, or to request HHSC approval of changed information in an approved NATCEP application.

(33) Nursing services--Services provided by nursing personnel that include, but are not limited to:

- (A) promotion and maintenance of health;
- (B) prevention of illness and disability;
- (C) management of health care during acute and chronic phases of illness;
- (D) guidance and counseling of individuals and families; and
- (E) referral to other health care providers and community resources when appropriate.

(34) Online portal--The Texas Unified Licensure Information Portal (TULIP), through which licensing application activities are completed.

(35) [(34)] Performance record--An evaluation of a trainee's performance of major duties and skills taught by a NATCEP and documented on HHSC Form 5497-NATCEP, Texas Nurse Aide Performance Record.

(36) [(35)] Person--A corporation, organization, partnership, association, natural person, or any other [legal] entity that can function legally.

(37) [(36)] Personal protective equipment (PPE)--Specialized clothing or equipment, worn by an employee for protection against infectious materials.

(38) [(37)] Program director--An individual who is approved by HHSC and meets the requirements in §556.5(b) and (d) of this chapter (relating to Program Director, Program Instructor, Supplemental Trainers, and Skills Examiner Requirements).

(39) [(38)] Program instructor--An individual who is approved by HHSC to conduct the training in a NATCEP and who meets the requirements in §556.5(c) and (d) of this chapter.

(40) [(39)] Resident--An individual accepted for care or residing in a facility.

(41) [(40)] Registered nurse (RN)--An individual licensed by the Texas Board of Nursing to practice professional nursing.

(42) [(41)] Skills examiner--An individual who is approved by HHSC and meets the requirements in §556.5(h) of this chapter.

(43) [(42)] Trainee--An individual who is enrolled in and attending, but has not completed, a NATCEP.

§556.3. *NATCEP Requirements.*

(a) To train nurse aides, a nursing facility must apply for and obtain approval from HHSC to offer a NATCEP or contract with another entity offering a NATCEP. The nursing facility must participate in Medicare, Medicaid, or both, to apply for approval to be a NATCEP.

(b) A person who wants to offer a NATCEP must file a complete NATCEP application with HHSC through the online portal.

(c) A person applying to offer a NATCEP must submit a separate NATCEP application through the online portal for each location at which training is delivered or administered.

(d) A NATCEP application must identify one or more facilities that the NATCEP uses as a clinical site. The clinical site must have all necessary equipment needed to practice and perform skills training.

(e) A NATCEP may offer clinical training hours in a laboratory setting under the following circumstances:

(1) no appropriate and qualified clinical site is located within 20 miles of the location of the NATCEP; or

(2) HHSC has determined that clinical training provided in a facility poses a risk to an individual's health or safety based on the existence of a disaster declared at the federal or state level. A NATCEP must request the ability to complete clinical training hours in a laboratory setting under the circumstances described in subsection (e)(1) of this section. HHSC will alert the public of the availability of laboratory training under the circumstances described in subsection (e)(2) of this section.

(f) HHSC does not approve a NATCEP offered by or in a nursing facility if, within the previous two years, the nursing facility:

(1) has operated under a waiver concerning the services of a registered nurse under §1819(b)(4)(C)(ii)(II) or §1919(b)(4)(C)(i) - (ii) of the Act;

(2) has been subjected to an extended or partially extended survey under §1819(g)(2)(B)(i) or §1919(g)(2)(B)(i) of the Act;

(3) has been assessed a civil money penalty of not less than \$5,000 as adjusted annually under 45 Code of Federal Regulations (CFR) Part ~~part~~ 102 for deficiencies in nursing facility standards, as described in §1819(h)(2)(B)(ii) or §1919(h)(2)(A)(ii) of the Act;

(4) has been subjected to denial of payment under Title XVIII or Title XIX of the Act;

(5) has operated under state-appointed temporary management to oversee the operation of the facility under §1819(h) or §1919(h) of the Act;

(6) had its participation agreement terminated under §1819(h)(4) or §1919(h)(1)(B)(i) of the Act; or

(7) pursuant to state action, closed or had its residents transferred under §1919(h)(2) of the Act.

(g) Clinical training provided by a NATCEP in a facility other than a nursing facility must be provided under the direct supervision

of the NATCEP instructor and cannot be delegated to any staff of the facility.

(h) A NATCEP using an assisted living facility as a clinical site may provide clinical training only in those services that are authorized to be provided to residents under Texas Health and Safety Code, Chapter 247.

(i) A NATCEP using an intermediate care facility for an individual with an intellectual disability or related conditions as a clinical site may provide clinical training only in those services that are authorized to be provided to individuals under Texas Health and Safety Code, Chapter 252.

(j) A NATCEP using a hospice inpatient unit as a clinical site may provide clinical training only in those services that are authorized to be provided to clients under Texas Health and Safety Code, Chapter 142.

(k) A nursing facility that is prohibited from offering a NATCEP under subsection (f) [(e)] of this section may contract with a person to offer a NATCEP in accordance with §1819(f)(2)(C) and §1919(f)(2)(C) of the Act so long as the person has not been employed by the nursing facility or by the nursing facility's owner and:

(1) the NATCEP is offered to employees of the nursing facility that is prohibited from training nurse aides under subsection (e) of this section;

(2) the NATCEP is offered in, but not by, the prohibited nursing facility;

(3) there is no other NATCEP offered within a reasonable distance from the nursing facility; and

(4) an adequate environment exists for operating a NATCEP in the nursing facility.

(l) A person who wants to contract with a nursing facility in accordance with subsection (k) of this section must submit a completed application to HHSC through the online portal in accordance with §556.4 of this chapter (relating to Filing and Processing an Application for a Nurse Aide Training and Competency Evaluation Program (NATCEP)) and include the name of the prohibited nursing facility in the application. HHSC may withdraw the application within two years of approving it if HHSC determines that the nursing facility is no longer prohibited from offering a NATCEP.

(m) A nursing facility that is prohibited from offering a NATCEP under subsection (f)(3) [(e)(3)] of this section may request a Centers for Medicare and Medicaid Services waiver of the prohibition related to the civil money penalty in accordance with §1819(f)(2)(D) and §1919(f)(2)(D) of the Act and 42 CFR §483.151(c) if:

(1) the civil money penalty was not related to the quality of care furnished to residents;

(2) the NATCEP submits a request to HHSC for the waiver; and

(3) the Centers for Medicare and Medicaid Services approves the waiver.

(n) A NATCEP must ensure the trainee has completed 100 hours of training. The 100 hours must include:

(1) 60 hours of classroom training:

(A) taught by the NATCEP either in-person or virtually;

or

(B) completed by the trainee through HHSC's computer-based training (CBT) within the preceding 12 months; and

(2) 40 hours of clinical training provided by the NATCEP with at least one program instructor for every 10 trainees.

(o) A NATCEP that provides online training must:

(1) maintain records in accordance with subsection (y) of this section and otherwise comply with this chapter;

(2) adopt, implement, and enforce a policy and procedures for establishing that a trainee who registers in an online training is the same trainee who participates in and completes the course ~~and that~~. This policy and associated procedures must describe the procedures the NATCEP uses to:

(A) verify a trainee's identity;

(B) ensure protection of a trainee's privacy and personal information; and

(C) document the hours completed by each trainee; and

(3) verify on the NATCEP application that the online course has the security features required under paragraph (2) of this subsection.

(p) A NATCEP must teach the curriculum established by HHSC and described in 42 CFR §483.152. Except as provided in subsection (q) of this section, the NATCEP must include at least 16 introductory hours of classroom training in the following areas before a trainee has any direct contact with a resident:

(1) communication and interpersonal skills;

(2) infection control;

(3) safety and emergency procedures, including ways to assist someone who is choking, such as the Heimlich maneuver;

(4) promoting a resident's independence;

(5) respecting a resident's rights;

(6) basic nursing skills, including:

(A) taking and recording vital signs;

(B) measuring and recording height and weight;

(C) caring for a resident's environment;

(D) recognizing abnormal changes in body functioning and the importance of reporting such changes to a supervisor; and

(E) caring for a resident when death is imminent;

(7) personal care skills, including:

(A) bathing;

(B) grooming, including mouth care;

(C) dressing;

(D) toileting;

(E) assisting with eating and hydration;

(F) proper feeding techniques;

(G) skin care; and

(H) transfers, positioning, and turning;

(8) mental health and social service needs, including:

(A) modifying the aide's behavior in response to a resident's behavior;

(B) awareness of developmental tasks associated with the aging process;

(C) how to respond to a resident's behavior;

(D) allowing a resident to make personal choices, providing and reinforcing other behavior consistent with the resident's dignity; and

(E) using a resident's family as a source of emotional support;

(9) care of cognitively impaired residents, including:

(A) techniques for addressing the unique needs and behaviors of a resident with a dementia disorder including Alzheimer's disease;

(B) communicating with a cognitively impaired resident;

(C) understanding the behavior of a cognitively impaired resident;

(D) appropriate responses to the behavior of a cognitively impaired resident; and

(E) methods of reducing the effects of cognitive impairments;

(10) basic restorative services, including:

(A) training a resident in self-care according to the resident's abilities;

(B) use of assistive devices in transferring, ambulation, eating, and dressing;

(C) maintenance of range of motion;

(D) proper turning and positioning in bed and chair;

(E) bowel and bladder training; and

(F) care and use of prosthetic and orthotic devices; and

(11) a resident's rights, including:

(A) providing privacy and maintenance of confidentiality;

(B) promoting the resident's right to make personal choices to accommodate their needs;

(C) giving assistance in resolving grievances and disputes;

(D) providing needed assistance in getting to and participating in resident, family, group, and other activities;

(E) maintaining care and security of the resident's personal possessions;

(F) promoting the resident's right to be free from abuse, mistreatment, and neglect and the need to report any instances of such treatment to appropriate facility staff; and

(G) avoiding the need for restraints in accordance with current professional standards.

(q) If a trainee completes HHSC's 60-hour classroom training CBT, a NATCEP must accept proof of completion of the CBT in lieu of the 16 introductory hours of classroom training in subsection (p) of this section and the eight hours of infection control training in subsection (t) of this section. The NATCEP must ensure that the trainee:

(1) only performs services for which the trainee has been trained and has been found to be proficient by a program instructor;

(2) is under the direct supervision of a licensed nurse when performing skills as part of a NATCEP until the trainee has been found competent by the program instructor to perform that skill;

(3) is under the general supervision of a licensed nurse when providing services to a resident after a trainee has been found competent by the program instructor; and

(4) is clearly identified as a trainee during the clinical training portion of the NATCEP.

(r) A NATCEP that fails to accept proof of completion of the classroom training in accordance with subsection (n)(1)(B) of this chapter may be subject to §556.8 of this chapter (relating to Withdrawal of Approval of a NATCEP).

(s) A NATCEP must have a program director and a program instructor when the NATCEP applies for initial approval by HHSC in accordance with §556.7 of this chapter (relating to Review and Reapproval of a Nurse Aide Training and Competency Evaluation Program (NATCEP)) and to maintain HHSC approval. The program director and program instructor must meet the requirements of §556.5(b) - (d) of this chapter (relating to Program Director, Program Instructor, Supplemental Trainers, and Skills Examiner Requirements).

(t) Except as provided in subsection (q) of this section, a NATCEP must teach eight hours of infection control that includes the proper use of personal protective equipment (PPE) before a trainee has any direct contact with a resident.

(u) A NATCEP must verify that a trainee:

- (1) is not listed on the NAR in revoked status; and
- (2) is not listed as unemployable on the EMR. ~~and~~

~~{(3) has not been convicted of a criminal offense listed in Texas Health and Safety Code (THSC) §250.006(a) or convicted of a criminal offense listed in THSC §250.006(b) within the five years immediately before participating in the NATCEP.}~~

(v) A NATCEP must ensure that a trainee:

(1) completes the first 16 introductory hours of training (Section I of the curriculum) before having any direct contact with a resident;

(2) only performs services for which the trainee has been trained and has been found to be proficient by a program instructor;

(3) is under the direct supervision of a licensed nurse when performing skills as part of the NATCEP until the trainee has been found competent by the program instructor to perform that skill;

(4) is under the general supervision of a licensed nurse when providing services to a resident after a trainee has been found competent by the program instructor; and

(5) is clearly identified as a trainee during the clinical training portion of the NATCEP.

(w) A NATCEP must submit a NATCEP application through the online portal to HHSC if the information in an approved NATCEP application changes. The NATCEP may not continue training or start new training until HHSC approves the change. HHSC conducts a review of the NATCEP information if HHSC determines the changes are substantive.

(x) A NATCEP must use HHSC Form 5497-NATCEP, Texas Nurse Aide Performance Record, to document major duties or skills taught, trainee performance of a duty or skill, satisfactory or unsatisfactory performance, and the name of the instructor supervising the performance. At the completion of the NATCEP, the trainee and the

employer, if applicable, will receive a copy of the performance record. The NATCEP must maintain a copy of the performance record.

(y) A NATCEP must maintain records for each session of classroom training, whether offered in person or online, and of clinical training, and must make these records available to HHSC or its designees at any reasonable time.

(1) The classroom and clinical training records must include:

(A) dates and times of all classroom and clinical training;

(B) the full name and social security number of each trainee;

(C) a record of the date and time of each classroom and clinical training session a trainee attends;

(D) a final course grade that indicates pass or fail for each trainee; and

(E) a physical or electronic sign-in record for each classroom and clinical training session. An electronic sign-in must include a form of identity verification for the trainee conducted in compliance with the requirements of subsection (o)(2) of this section.

(2) If a trainee completes the classroom training by successfully completing HHSC's CBT, a NATCEP must retain records that include a copy of the trainee's certification of completion for the CBT. The certificate of completion must be issued by HHSC and include the date the trainee completed the CBT.

(3) A NATCEP must provide to HHSC, on the NATCEP application through the online portal, the physical address where all records are maintained and must notify HHSC of any change in the address provided.

(z) A nursing facility must not charge a nurse aide for any portion of a NATCEP, including any fees for textbooks or other required course materials, if the nurse aide is employed by or has received an offer of employment from a facility on the date the nurse aide begins the NATCEP.

(aa) HHSC reimburses a nurse aide for a portion of the costs incurred by the nurse aide to complete a NATCEP if the nurse aide is employed by or has received an offer of employment from a nursing facility within 12 months of completing the NATCEP.

(bb) HHSC must approve a NATCEP before the NATCEP solicits or enrolls trainees.

(cc) HHSC approval of a NATCEP only applies to the required curriculum and hours. HHSC does not approve additional content or hours.

(dd) A new employee or trainee orientation given by a nursing facility to a nurse aide employed by the facility does not constitute a part of a NATCEP.

(ee) A NATCEP that provides training to renew a nurse aide's listing on the NAR must include training in geriatrics and the care of residents with a dementia disorder, including Alzheimer's disease.

§556.4. Filing and Processing an Application for a Nurse Aide Training and Competency Evaluation Program (NATCEP).

(a) A person that wants to offer a NATCEP must complete a NATCEP application on forms prescribed by HHSC and submit the application to HHSC through the online portal.

(b) HHSC determines whether to approve or deny the NATCEP application.

(c) Within 90 days after HHSC receives a complete NATCEP application, HHSC notifies a NATCEP applicant of approval or proposed denial of a NATCEP application through the online portal, or notifies the applicant through the online portal of a deficiency or error in accordance with subsection (d) of this section. If HHSC proposes to deny the application due to the applicant's noncompliance with the requirements of the Act or this chapter, HHSC provides the reason for the denial in the notice.

(d) If HHSC finds a deficiency or error in a NATCEP application, HHSC notifies the applicant in writing through the online portal of the deficiency or error and gives the applicant an opportunity to correct the deficiency or error. The applicant must submit the additional or corrected information to HHSC, through the online portal [in writing], within 10 days after the applicant receives notice of the deficiency or error.

(e) If HHSC proposes to deny a NATCEP application based on the NATCEP's failure to comply with §556.3 of this chapter (relating to Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements), or §556.7 of this chapter (relating to Review and Reapproval of a Nurse Aide Training and Competency Evaluation Program (NATCEP)), the applicant may request a hearing to challenge the denial. A hearing is governed by 1 Texas Administrative Code (TAC) Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act), and Chapter 110 of this title [40 TAC Chapter 91] (relating to Hearings Under the Administrative Procedure Act). 1 TAC §357.484 (relating to Request for a Hearing) requires a hearing to be requested in writing within 15 days after the date the notice is received by the applicant. If an applicant does not make a timely request for a hearing, the applicant waives a hearing and HHSC may deny the NATCEP application.

§556.5. Program Director, Program Instructor, Supplemental Trainers, and Skills Examiner Requirements.

(a) A NATCEP must have an approved program director and program instructor to provide training.

(1) Training of trainees must be performed by or under the general supervision of a registered nurse (RN) who has a minimum of two years of nursing experience, at least one year of which must be in a nursing facility.

(2) An applicant for a NATCEP must certify on the NATCEP application that the NATCEP meets the requirements in paragraph (1) of this subsection.

(b) A program director must:

- (1) be an RN in the State [state] of Texas;
- (2) have a minimum of two years of nursing experience;

and

(3) have completed a course focused on teaching adult students or have experience in teaching adult students or supervising nurse aides.

(c) An instructor must:

(1) be a licensed vocational nurse (LVN) or an RN in the state of Texas;

(2) have a minimum of two years of nursing experience;

and

(3) have completed a course focused on teaching adult students or have experience in teaching adult students or supervising nurse aides.

(d) Either the program director or a program instructor must have at least one year of experience providing long term care services in a nursing facility. If an instructor is an LVN, a NATCEP must have:

(1) a director with at least one year of providing long term care services in a nursing facility; or

(2) an instructor who is an RN with at least one year of providing long term care services in a nursing facility.

(e) Program director. A program director must directly perform training or have general supervision of the program instructor and supplemental trainers. A NATCEP must have a program director when the NATCEP applies for initial approval by HHSC in accordance with §556.7 of this chapter (relating to Review and Reapproval of a Nurse Aide Training and Competency Evaluation Program (NATCEP)) and to maintain HHSC approval.

(1) In a facility-based NATCEP, the director of nursing (DON) for the nursing facility may be approved as the program director but must not conduct the training.

(2) A program director may supervise more than one NATCEP.

(3) A program director's responsibilities include, but are not limited to:

(A) directing the NATCEP in compliance with the Act and this chapter;

(B) directly performing training or having general supervision of the program instructor and supplemental trainers;

(C) ensuring that NATCEP records are maintained;

(D) determining if trainees have passed both the classroom and clinical training portions of the NATCEP;

(E) signing a competency evaluation application completed by a trainee who has passed both the classroom and clinical training portions of the NATCEP; and

(F) signing a certificate of completion or a letter on letterhead stationery of the NATCEP or the nursing facility, stating that the trainee passed both the classroom and clinical training portions of the NATCEP if the trainee does not take the competency evaluation with the same NATCEP. The certificate or letter must include the date training was completed, the total training hours completed, and the official NATCEP name and number on file with HHSC.

(G) Completion of the classroom training for trainees who complete the HHSC CBT is determined by the certificate of completion, which includes the date the trainee completed the CBT.

(4) A NATCEP must submit a NATCEP application for HHSC approval if the program director of the NATCEP changes.

(f) Program instructor. A NATCEP must have at least one qualified program instructor when the NATCEP applies for initial approval by HHSC in accordance with §556.7 of this chapter and when training occurs.

(1) The program instructor is responsible for conducting the classroom and clinical training of the NATCEP under the general supervision of the program director.

(2) An applicant for a NATCEP must certify on the NATCEP application that all program instructors meet the requirements in subsection (c) of this section.

(3) A NATCEP must submit a NATCEP application for HHSC approval if a program instructor of the NATCEP changes.

(g) Supplemental trainers. Supplemental trainers may supplement the training provided by the program instructor in a NATCEP.

(1) A supplemental trainer must be a licensed health professional acting within the scope of the professional's practice and have at least one year of experience in the field of instruction.

(2) The program director must select and supervise each supplemental trainer.

(3) A supplemental trainer must not act in the capacity of the program instructor without HHSC approval. To request approval, a NATCEP must submit a NATCEP application to HHSC.

(h) Skills examiner. A skills examiner must administer the competency evaluation.

(1) HHSC or its designee approves an individual as a skills examiner if the individual:

(A) is an RN;

(B) has a minimum of one year of professional experience in providing care for the elderly or chronically ill of any age; and

(C) has completed a skills training seminar conducted by HHSC or its designee.

(2) A skills examiner must:

(A) adhere to HHSC standards for each skill examined;

(B) conduct a competency evaluation in an objective manner according to the criteria established by HHSC;

(C) validate competency evaluation results on forms prescribed by HHSC;

(D) submit prescribed forms and reports to HHSC or its designee; and

(E) not administer a competency evaluation to an individual who participates in a NATCEP for which the skills examiner was the program director, the program instructor, or a supplemental trainer.

§556.6. *Competency Evaluation Requirements.*

(a) Only HHSC, or an entity HHSC approves, may provide a competency evaluation, which must be administered by a skills examiner at an approved evaluation site.

(b) A trainee is eligible to take a competency evaluation if the trainee has successfully completed the training portion of a NATCEP, as determined by the program director, or is eligible under §556.12 [§556.H] of this chapter (relating to Waiver, Reciprocity, and Exemption Requirements) and HHSC reviews and finds that the trainee has not been convicted of a criminal offense listed in Texas Health and Safety Code §250.006(a) and (c) and has not been convicted of a criminal offense listed in Texas Health and Safety Code §250.006(b) within the preceding five years.

(c) If a trainee cannot take a competency evaluation at the NATCEP location where the trainee received training, the trainee may take a competency evaluation at another location approved to offer the evaluation.

(d) An eligible trainee must obtain from the program director a signed competency evaluation application and a certificate or letter of completion of training. The trainee must arrange to take the competency evaluation at an approved location and must follow the instructions on the competency evaluation application.

(e) A NATCEP must:

(1) promptly, after one of its trainees successfully completes the NATCEP training, approve the trainee to take a competency evaluation;

(2) provide the trainee with information regarding scheduling a competency evaluation; and

(3) ensure that the trainee accurately completes the competency evaluation applications.

(f) A trainee must:

(1) submit the applicant's fingerprints to the Texas Department of Public Safety for a Federal Bureau of Investigation criminal background check;

(2) ~~[(4)]~~ take a competency evaluation within 24 months after completing the training portion of a NATCEP;

(3) apply to take the competency evaluation through the online portal;

(4) ~~[(2)]~~ verify the arrangements for a competency evaluation;

(5) ~~[(3)]~~ complete a competency evaluation application and submit the application in accordance with application instructions;

(6) ~~[(4)]~~ request another competency evaluation if the trainee fails a competency evaluation; and

(7) ~~[(5)]~~ meet any other procedural requirements specified by HHSC or its designated skills examiner.

(g) A competency evaluation must consist of:

(1) a skills demonstration that requires the trainee to demonstrate five randomly selected skills drawn from a pool of skills that are generally performed by nurse aides, including all personal care skills listed in the curriculum; and

(2) a written or oral examination, which includes 60 scored multiple-choice questions selected from a pool of test items that address each course requirement in the curriculum. Written examination questions may be printed in a test booklet with a separate answer sheet or provided in an online testing format as approved by HHSC. An oral examination must be a recorded presentation read from a prepared text in a neutral manner that includes questions to test reading comprehension.

(h) A trainee with a disability, including a trainee with dyslexia as defined in Texas Education Code §51.970 (relating to Instructional Material for Blind and Visually Impaired Students and Students with Dyslexia), may request a reasonable accommodation for the competency evaluation under the Americans with Disabilities Act.

(i) To successfully complete the competency evaluation, a trainee must achieve a score HHSC designates as a passing score on:

(1) the skills demonstration; and

(2) the written or oral examination.

(j) A trainee who fails the skills demonstration or the written or oral examination may retake the competency evaluation twice.

(1) A trainee must be advised of the areas of the competency evaluation that the trainee did not pass.

(2) If a trainee fails a competency evaluation three times, the trainee must complete the training portion of a NATCEP before taking a competency evaluation again.

(k) HHSC informs a trainee before the trainee takes a competency evaluation that HHSC issues a certificate of registration and

records successful completion of the competency evaluation on the Nurse Aide Registry (NAR) [NAR].

(l) HHSC[, or its designee,] issues the certificate of registration through the online portal and records successful completion of the competency evaluation on the NAR within 30 days after the date the trainee passes the competency evaluation.

(m) A nursing facility must not offer or serve as a competency evaluation site if the nursing facility is prohibited from offering a NATCEP under the provisions of §556.3(f) of this chapter (relating to Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements).

(n) A trainee may not be charged for any portion of a competency evaluation if the trainee is employed by or has received an offer of employment from a nursing facility on the date the trainee takes the competency evaluation.

(o) HHSC reimburses a nurse aide for a portion of the costs incurred by the individual to take a competency evaluation if the individual is employed as a nurse aide by, or has received an offer of employment from, a nursing facility within 12 months after taking the competency evaluation.

§556.7. Review and Reapproval of a Nurse Aide Training and Competency Evaluation Program (NATCEP).

(a) A NATCEP must apply to have its approval renewed every two years. HHSC sends a notice of renewal through the online portal to a NATCEP at least 60 days before the expiration date of an approval.

(b) A NATCEP must submit a NATCEP application through the online portal at least 30 days before the expiration date of an approval. If a NATCEP does not file an application to renew an approval at least 30 days before the expiration of the approval, the approval expires.

(c) HHSC uses the results of an on-site or off-site visit to determine NATCEP compliance with the Act and this chapter and to decide whether to renew the approval of a NATCEP.

(d) HHSC may conduct an on-site or off-site review of a NATCEP at any reasonable time.

(e) HHSC provides written notification through the online portal to a NATCEP of deficiencies found during an on-site or off-site review.

(1) If a NATCEP receives a notification of deficiencies from HHSC, the NATCEP must submit a written response to HHSC through the online portal, which must include a plan of correction (POC) to correct all deficiencies.

(2) HHSC may direct a NATCEP to comply with the requirements of the Act and this chapter.

(3) HHSC may not renew the approval of a NATCEP that does not meet the requirements of the Act and this chapter by failing to provide an adequate POC.

(f) A NATCEP approved by HHSC may provide in-service education to a nurse aide that is necessary to have the certificate of registration and associated listing on the NAR renewed.

(g) A NATCEP must receive approval or an exemption under Texas Education Code Chapter 132 (relating to Career Schools and Colleges).

§556.8. Withdrawal of Approval of a NATCEP.

(a) HHSC immediately withdraws approval of a facility-based NATCEP if the nursing facility where the NATCEP is offered has:

(1) been granted a waiver concerning the services of an RN under §1819(b)(4)(C)(ii)(II) or §1919(b)(4)(C)(i)-(ii) of the Act;

(2) been subject to an extended (or partially extended) survey under §1819(g)(2)(B)(i) or §1919(g)(2)(B)(i) of the Act;

(3) been assessed a civil money penalty of not less than \$5,000, as adjusted annually under 45 Code of Federal Regulations (CFR), Part 102, for deficiencies in nursing facility standards, as described in §1819(h)(2)(B)(ii) or §1919(h)(2)(A)(ii) of the Act;

(4) been subject to denial of payment under Title XVIII or Title XIX of the Act;

(5) operated under state-appointed or federally appointed temporary management to oversee the operation of the facility under §1819(h) or §1919(h) of the Act;

(6) had its participation agreement terminated under §1819(h)(4) or §1919(h)(1)(B)(i) of the [Social Security] Act;

(7) pursuant to state action, closed or had its residents transferred under §1919(h)(2); or

(8) refused to permit unannounced visits by HHSC.

(b) HHSC withdraws approval of a NATCEP if the NATCEP does not comply with §556.3 of this chapter (relating to NATCEP Requirements).

(1) HHSC reviews allegations of noncompliance with this chapter by a NATCEP. If HHSC receives an allegation of noncompliance, HHSC notifies the NATCEP in writing and gives the NATCEP an opportunity to correct the noncompliance or provide documentation showing compliance. The NATCEP must correct the noncompliance or provide evidence of compliance and submit notification of the correction or documentation to show compliance to HHSC, in writing, within 10 days after receipt of the notice of noncompliance.

(2) If the NATCEP fails to correct the noncompliance, provide documentation showing compliance, or respond to the first notification from HHSC, HHSC sends a second notice. The NATCEP must correct the noncompliance or provide documentation showing compliance and submit notification of the correction or documentation to show compliance to HHSC, in writing, within 20 days after receipt of the second notice. Failure to comply will result in withdrawal of approval of the NATCEP.

(c) If HHSC withdraws approval of a NATCEP for failure to comply with §556.3 of this chapter, HHSC does not approve the NATCEP for at least two years after the date the approval was withdrawn.

(d) If HHSC proposes to withdraw approval of a NATCEP based on subsection (a) of this section, HHSC notifies the NATCEP via email and through the online portal of the facts or conduct alleged to warrant the withdrawal. [~~HHSC sends the notice to the facility's last known email address as shown in HHSC records.~~]

(e) A dually certified nursing facility that offers a NATCEP may request a hearing to challenge the findings of noncompliance that led to the withdrawal of approval of the NATCEP, but not the withdrawal of approval of the NATCEP itself, in accordance with 42 CFR, Part 498.

(f) A nursing facility that offers a NATCEP and that participates only in Medicaid may request a hearing to challenge the findings of noncompliance that led to the withdrawal of approval of the NATCEP, but not the withdrawal of approval of the NATCEP itself. A hearing is governed by 1 Texas Administrative Code (TAC) Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act), and Chapter 110 of this title [40 TAC Chapter 94] (relating

to Hearings Under the Administrative Procedure Act), except the nursing facility must request the hearing within 60 days after receipt of the notice described in subsection (d) of this section, as allowed by 42 CFR §431.153.

(g) A nursing facility may request a hearing under subsection (e) or (f) of this section, but not both.

(h) If the finding of noncompliance that led to the denial of approval of the NATCEP by HHSC is overturned, HHSC rescinds the denial of approval of the NATCEP.

(i) If HHSC proposes to withdraw approval of a NATCEP based on §556.3 of this chapter or §556.7 of this chapter (relating to Review and Reapproval of a Nurse Aide Training and Competency Evaluation Program (NATCEP)), the NATCEP may request a hearing to challenge the withdrawal. A hearing is governed by 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedures Act), and Chapter 110 of this title [40 TAC Chapter 91] (relating to Hearings Under the Administrative Procedures Act). 1 TAC §357.484 (relating to Request for a Hearing) requires a hearing to be requested in writing within 15 days after the date the notice is received by the applicant. If a NATCEP does not make a timely request for a hearing, the applicant has waived the opportunity for a hearing and HHSC may withdraw the approval.

(j) A trainee who started a NATCEP before HHSC sent notice that it was withdrawing approval of the NATCEP may complete the NATCEP.

§556.9. Certificate of Registration, Nurse Aide Registry, and Renewal.

(a) HHSC is the agency responsible for issuing individuals a certificate of registration and listing them on the Nurse Aide Registry (NAR) [NAR].

(b) To be issued a certificate of registration and be listed on the NAR as having active status, a nurse aide must successfully complete a NATCEP, as described in §556.6(i) of this chapter (relating to Competency Evaluation Requirements) and apply for certificate of registration through the online portal.

(c) Each applicant for certificate of registration, regardless of path to certification, must submit the applicant's fingerprints to the Texas Department of Public Safety for a Federal Bureau of Investigation criminal background check.

(d) [(e)] HHSC does not charge a fee to issue the certificate of registration or list a nurse aide on the NAR or to renew the certificate of registration and the nurse aide's listing of active status on the NAR.

(e) [(d)] A nurse aide listed on the NAR must inform HHSC of the nurse aide's current address and telephone number through the online portal.

(f) [(e)] The certificate of registration and the listing of active status on the NAR expires 24 months after the certificate of registration was issued and the nurse aide was listed on the NAR or 24 months after the last date of verified employment as a nurse aide, whichever is earlier. To renew the certificate of registration and active status on the NAR, the following requirements must be met:

(1) A nursing facility must submit a HHSC Employment Verification form renewal to HHSC through the online portal that documents that the nurse aide has performed paid nursing or nursing-related services at the nursing facility during the preceding year.

(2) A nurse aide must submit a HHSC Employment Verification form renewal to HHSC through the online portal to document that the nurse aide has performed paid nursing or nursing-related ser-

vices, if documentation is not submitted in accordance with paragraph (1) of this subsection by the nursing facility or facilities where the nurse aide was employed.

(3) A nurse aide must complete an HHSC course in infection control and proper use of PPE every year.

(4) A nurse aide must complete at least 24 hours of in-service education every two years. The in-service education must include training in geriatrics and the care of residents with a dementia disorder, including Alzheimer's disease. The in-service education must be provided by:

(A) a nursing facility;

(B) an approved NATCEP;

(C) HHSC; or

(D) a healthcare entity, other than a nursing facility, licensed or certified by HHSC, the Texas Department of State Health Services, or the Texas Board of Nursing.

(5) No more than 12 hours of the in-service education required by paragraph (4) of this subsection may be provided by an entity described in paragraph (4)(D) of this subsection.

§556.10. Certification of Individuals with Criminal Convictions in Their Backgrounds.

(a) HHSC may suspend or revoke an existing certification, deny a certification, or deny a person the opportunity to take the examination for certification if the person has any conviction barring employment listed in Texas Health and Safety Code §250.006.

(b) HHSC staff reviews an applicant's or existing nurse aide's criminal background based on the Federal Bureau of Investigation fingerprinting submitted through the Texas Department of Public Safety.

§556.11. Expiration of the Certificate of Registration and Active Status.

(a) A nurse aide's certificate of registration and status on the Nurse Aide Registry (NAR) is changed to expired if the nurse aide has not performed nursing-related services or acted as a nurse aide for monetary compensation for 24 consecutive months and does not apply for renewal in the online portal.

(b) A nurse aide whose certificate of registration has expired and is listed as expired on the NAR must complete a Nurse Aide Training and Competency Evaluation Program or a competency evaluation and apply through the online portal to reactivate the certificate of registration and be listed on the NAR with active status.

§556.12. Waiver, Reciprocity, and Exemption Requirements.

(a) HHSC may waive the requirement for a nurse aide to take the NATCEP specified in §556.3 of this chapter (relating to Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements) and issue a certificate of registration and place a nurse aide on the Nurse Aide Registry (NAR) on active status if the nurse aide:

(1) submits proof of completing a nurse aide training course of at least 100 hours duration before July 1, 1989, through the online portal;

(2) submits a HHSC Employment Verification form to HHSC through the online portal to document that the nurse aide performed nursing or nursing-related services for monetary compensation at least once every two years since July 1, 1989;

(3) is not listed as unemployable on the EMR;

(4) has not been convicted of a criminal offense listed in Texas Health and Safety Code (THSC) §250.006(a) and (c), or con-

victed of a criminal offense listed in THSC §250.006(b) within the preceding five years as reviewed by HHSC; and

(5) completes the HHSC Waiver of Nurse Aide Training and Competency Evaluation Program form through the online portal.

(b) HHSC issues the certificate of registration through the online portal and places a nurse aide on the NAR by reciprocity if:

(1) the nurse aide is listed as having active status on another state's registry of nurse aides;

(2) the other state's registry of nurse aides is in compliance with the Act;

(3) the nurse aide is not listed as unemployable on the EMR;

(4) the nurse aide has not been convicted of a criminal offense listed in THSC §250.006(a) and (c), or convicted of a criminal offense listed in THSC §250.006(b) within the preceding five years as reviewed by HHSC; and

(5) the nurse aide completes an HHSC Reciprocity form and submits it to HHSC through the online portal.

(c) A person is eligible to take a competency evaluation with an exemption from the nurse aide training specified in §556.3 of this chapter if the individual:

(1) meets one of the following requirements for eligibility:

(A) is seeking renewal under §556.9 of this chapter (relating to Certificate of Registration, Nurse Aide Registry, and Renewal);

(B) has successfully completed at least 100 hours of training at a NATCEP in another state within the preceding 24 months but has not taken the competency evaluation or been placed on an NAR in another state;

(C) has successfully completed at least 100 hours of military training, equivalent to civilian nurse aide training, on or after July 1, 1989;

(D) has successfully completed an RN or LVN program at an accredited school of nursing in the United States within the preceding 24 months;

(i) is not licensed as an RN or LVN in the state of Texas; and

(ii) has not held a license as an RN or LVN in another state that has been revoked; or

(E) is enrolled or has been enrolled within the preceding 24 months in an accredited school of nursing in the United States and demonstrates competency in providing basic nursing skills in accordance with the school's curriculum;

(2) is not listed as unemployable on the EMR;

(3) has not been convicted of a criminal offense listed in THSC §250.006(a) and (c), or convicted of a criminal offense listed in THSC §250.006(b) within the preceding five years as reviewed by HHSC;

(4) submits documentation to verify at least one of the requirements in paragraph (1) of this subsection;

(5) arranges for a nursing facility or NATCEP to serve as a competency evaluation site; and

(6) before taking the competency evaluation, presents to the skills examiner an original letter from HHSC authorizing the person to take the competency evaluation.

§556.13. Findings and Inquiries.

(a) HHSC reviews and investigates allegations of abuse, neglect, or misappropriation of resident property by a nurse aide employed in a nursing facility. If HHSC finds that a nurse aide committed an act of abuse, neglect, or misappropriation of resident property, before entry of the finding on the Nurse Aide Registry (NAR), HHSC provides the nurse aide an opportunity to dispute the finding through an informal review (IR) and a hearing as described in this section.

(b) If HHSC finds that a nurse aide committed an act of abuse, neglect, or misappropriation of resident property, HHSC sends the nurse aide a written notice regarding the finding. The notice includes:

(1) a summary of the findings and facts on which the findings are based;

(2) a statement informing the nurse aide of the right to an IR to dispute HHSC findings;

(3) a statement informing the nurse aide that a request for an IR must be made within 10 days after the date the nurse aide receives the written notice; and

(4) the address and contact information where the nurse aide must submit a request for an IR.

(c) If a nurse aide requests an IR, HHSC sets a date to allow the nurse aide to dispute the findings of the investigation of abuse, neglect, or misappropriation of resident property. The nurse aide may dispute the findings by providing testimony, in person or by telephone, to impartial HHSC staff.

(1) If HHSC does not uphold the findings, HHSC notifies the nurse aide of the results of the IR and closes the investigation. HHSC does not record information related to the investigation in the NAR.

(2) If HHSC upholds the findings, HHSC notifies the nurse aide of the results of the IR. The nurse aide may request a hearing in accordance with subsection (d) of this section.

(3) If the nurse aide does not request an IR, or fails to appear for a requested IR, HHSC upholds the findings. The nurse aide may request a hearing in accordance with subsection (d) of this section.

(d) A nurse aide may request a hearing after receipt of HHSC notice of the results of an IR described in subsection (c)(2) of this section. Texas Administrative Code (TAC), Title 1, Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act), and Chapter 110 of this title (relating to Hearings Under the Administrative Procedure Act) govern the hearing, except that a nurse aide must request a formal hearing within 30 days after receipt of HHSC notice in compliance with 42 Code of Federal Regulations §488.335. If the nurse aide fails to request a hearing, the nurse aide waives the opportunity for a hearing and HHSC enters the finding of abuse, neglect, or misappropriation of resident property, as appropriate, on the NAR.

(e) If HHSC receives an allegation that a nurse aide, who has a medication aide permit under Chapter 557 of this title (relating to Medication Aides--Program Requirements), committed an act of abuse, neglect, or misappropriation of resident property, HHSC investigates the allegation under this section regarding the nurse aide practice and under Chapter 557 of this title to determine if the allegation violates the medication aide practice. The investigations run concurrently. If after the investigations, the nurse aide requests hearings on the findings un-

der the nurse aide practice and the medication aide practice, only one hearing, conducted in accordance with subsection (d) of this section, is available to the nurse aide.

(f) If HHSC finds that a nurse aide committed an act of abuse, neglect, or misappropriation of resident property, HHSC reports the finding to:

(1) the NAR;

(2) the nurse aide;

(3) the administrator of the nursing facility in which the act occurred; and

(4) the administrator of the nursing facility that employs the nurse aide, if different from the nursing facility in which the act occurred.

(g) The NAR must include the findings involving a nurse aide listed on the NAR as well as any brief statement of the nurse aide disputing the findings.

(h) The information on the NAR is available to the public.

(i) If an inquiry is made about a nurse aide's status on the NAR, HHSC must:

(1) verify if the nurse aide is listed on the NAR;

(2) disclose information concerning a finding of abuse, neglect, or misappropriation of resident property involving the nurse aide; and

(3) disclose any statement by the nurse aide related to the finding.

(j) If a nurse aide works in a capacity other than a nurse aide in a nursing facility and is listed as unemployable in the EMR, HHSC revokes or suspends the certificate of registration and changes the status of the nurse aide's listing on the NAR to revoked or suspended. The due process available to the nurse aide before placement on the EMR satisfies the due process required before HHSC revokes or suspends the certificate of registration and changes the nurse aide's status on the NAR.

(k) If HHSC revokes or suspends the certificate of registration and lists a nurse aide's status on the NAR as suspended or revoked because of a single finding of neglect, the nurse aide may request that HHSC reissue the certificate of registration and remove the finding after the finding has been listed on the NAR for one year. To request removal of the finding, the nurse aide must submit a HHSC Petition for Removal of Neglect Finding to HHSC in accordance with the petition's instructions.

§556.14. Alternate Licensing Requirements for Military Service Personnel.

(a) Additional time for in-service education.

(1) HHSC gives a nurse aide an additional two years to complete in-service education required for a nurse aide to maintain his or her certificate of registration and an active listing on the Nurse Aide Registry (NAR), as described in §556.9(f) of this chapter (relating to Certificate of Registration, Nurse Aide Registry, and Renewal), if HHSC receives and approves a request through the online portal for additional time to complete in-service training from a nurse aide in accordance with this subsection.

(2) To request additional time to complete in-service education, a nurse aide must submit a written request for additional time to HHSC through the online portal before the expiration date of the nurse aide's certification. The nurse aide must include with the request doc-

umentation of the nurse aide's status as a military service member that is acceptable to HHSC. Documentation as a military service member that is acceptable to HHSC includes a copy of a military service order issued by the United States Armed Forces, the State of Texas, or another state.

(3) If HHSC requests additional documentation, the nurse aide must submit the requested documentation.

(4) HHSC approves a request for two additional years to complete in-service education submitted in accordance with this subsection if HHSC determines that the nurse aide is a military service member, except HHSC does not approve a request if HHSC granted the nurse aide a previous extension and the nurse aide did not complete the in-service education requirements during the previous extension period.

(b) Renewal of expired certificate of registration and NAR listing.

(1) HHSC renews the certificate of registration and changes the status of a listing from expired to active if HHSC receives and approves a request through the online portal for renewal and an active status listing from a former nurse aide in accordance with this subsection.

(2) To request renewal and an active status listing, a former nurse aide must submit a written request with the documents required for renewal through the online portal in accordance with §556.9(f) of this chapter within five years after the former nurse aide's certificate of registration and listing expired. The former nurse aide must include with the request documentation of the former nurse aide's status as a military service member, military veteran, or military spouse that is acceptable to HHSC.

(3) Documentation of military status that is acceptable to HHSC includes:

(A) for status as a military service member, a copy of a current military service order issued to the former nurse aide by the armed forces of the United States, the State of Texas, or another state;

(B) for status as a military veteran, a copy of a military service discharge order issued to the former nurse aide by the armed forces of the United States, the State of Texas, or another state; and

(C) for status as a military spouse:

(i) a copy of a marriage certificate issued to the former nurse aide by a state of the United States or a foreign government; and

(ii) a copy of a current military service order issued to the former nurse aide's spouse by the armed forces of the United States, the State of Texas, or another state.

(4) If HHSC requests additional documentation, the former nurse aide must submit the requested documentation.

(5) HHSC approves a request for an active status listing submitted in accordance with this subsection if HHSC determines that:

(A) the former nurse aide meets the requirements for renewal described in §556.9(f) of this chapter;

(B) the former nurse aide is a military service member, military veteran, or military spouse;

(C) the former nurse aide has not committed an offense listed in Texas Health and Safety Code (THSC) §250.006(a) and (c) and has not committed an offense listed in THSC §250.006(b) during

the five years before the date the former nurse aide submitted the initial license application; and

(D) the former nurse aide is not listed on the EMR.

(c) HHSC replaces a lost, damaged, or destroyed certificate for a military spouse. A military spouse with an active nurse aide certificate can print a duplicate license through the online portal. A military spouse can request a change of name through the online portal by submitting a name change application.

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

Filed with the Office of the Secretary of State on March 18, 2024.

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Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: April 28, 2024

For further information, please call: (512) 438-3161



26 TAC §§556.10 - 556.13, 556.100

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; Texas Health and Safety Code §250.0035(d), which provides that the Executive Commissioner of HHSC shall adopt rules necessary to implement §250.0035 related to the issuance and renewal of certificates of registration and the regulation of nurse aides as necessary to protect the public health and safety; and Texas Health and Safety Code, Chapter 250, which requires HHSC to maintain a Nurse Aide Registry.

The repeals implement Texas Government Code §§411.1161, 531.0055, and 531.021; Texas Human Resources Code §32.021; and Texas Health and Safety Code §250.0035.

§556.10. *Expiration of the Certificate of Registration and Active Status.*

§556.11. *Waiver, Reciprocity, and Exemption Requirements.*

§556.12. *Findings and Inquiries.*

§556.13. *Alternate Licensing Requirements for Military Service Personnel.*

§556.100. *Nurse Aide Transition from Temporary Status.*

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3161



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 702. GENERAL ADMINISTRATION SUBCHAPTER B. AGENCY RECORDS AND INFORMATION

40 TAC §702.223

The Department of Family and Protective Services (DFPS) proposes a new agency rule §702.223 in Title 40, Texas Administrative Code (TAC), Chapter 702, Subchapter B, relating to Agency Records and Information.

BACKGROUND AND PURPOSE

In the 88th Texas legislative session the legislature enacted House Bill (HB) 63, which concerns reporting requirements for child abuse and neglect to the Department of Family and Protective Services (DFPS). Specifically, in Section 2 of HB 63, the bill requires DFPS to adopt rules concerning employee access to the identity of an individual who reports child abuse and neglect.

SECTION-BY-SECTION SUMMARY

Proposed new §702.223(a)(1)-(3) tracks the language of the statute, which specifies that DFPS and SSCC employees are only allowed access to the identity of the individual making a report of child abuse or neglect in certain circumstances. Section (a)(1) allows access to a reporter's identity if the employee is directly involved with an investigation, case, or other process involving the child who is the subject of the report or the child's parent or the person who has legal custody of the child. Section (a)(2) allows access to a reporter's identity if the employee supervises, directly or indirectly an employee described in subsection (a)(1) of this section. Section (a)(2) allows access to a reporter's identity if the employee has a legitimate professional interest in an investigation, case, or other process involving the child who is the subject of the report or the child's parent or other person who has legal custody of the child that requires access to the reporter's identity. Section (b) defines that "other process" includes but is not limited to quality assurance, locating a missing child, new and ongoing training of DFPS or SSCC staff, and necessary technical support to maintain or update the case management system. Lastly, under Section (c) a reporter's identity is confidential and may only be disclosed if waived in writing by the individual making the report, as provided by Texas Family Code §261.201, or to a law enforcement officer for the purposes of conducting a criminal investigation of the report.

FISCAL NOTE

Lea Ann Biggar, Chief Financial Officer of DFPS, has determined that for each year of the first five years that the section will be in effect, there will be no fiscal implications to state or local govern-

ments as a result of enforcing and administering the section as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT

DFPS has determined that during the first five years that the proposed rules will be in effect:

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of employee positions;
- (3) implementation of the proposed rule will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the proposed rule will not affect fees paid to the agency;
- (5) the proposed rule will create a new regulation;
- (6) the proposed rule will limit an existing regulation;
- (7) the proposed rule will not change the number of individuals subject to the rule; and
- (8) the proposed rule will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Ms. Biggar has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as the rule does not apply to small or micro-businesses, or rural communities.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the section as proposed.

There is no anticipated negative impact on local employment.

There is an anticipated negative impact on local employment.

COSTS TO REGULATED PERSONS

Pursuant to subsection (c)(7) of Texas Government Code §2001.0045, the statute does not apply to a rule that is adopted by the Department of Family and Protective Services

PUBLIC BENEFIT

Ms. Biggar has determined that for each year of the first five years the sections in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing or administering the section will be implementation of HB 63 of the 88th Texas Regular Legislative Session. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments and questions on this proposal must be submitted within 30 days of publication of the proposal in the *Texas Register*. Electronic comments and questions may be submitted to Christine Steinberg, Statewide Intake, Christine.Steinberg2@dfps.texas.gov or RULES@dfps.texas.gov. Hard copy comments may be submitted to the DFPS Rules Coordinator, Legal Services Sanjuanita Maltos, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030.

STATUTORY AUTHORITY

The new rule §702.223 is authorized pursuant to Texas Human Resources Code (HRC) §40.027, which provides that the DFPS Commissioner shall adopt rules for the operation and provision of services by the agency and Texas Family Code (TFC) §261.201(n), which directs DFPS to adopt rules concerning employee access to a reporter's identity.

The modification is proposed under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

CROSS REFERENCE TO STATUTES

The new rule implements Texas Family Code §263.1021. §261.201(m) and (n) and §261.304(a).

§702.223. Which DFPS employee or Single Source Continuum Contractor (SSCC) employee can have access to the identity of an individual reporting child abuse or neglect?

(a) A DFPS employee and a Single Source Continuum Contractor (SSCC) employee, is only allowed access to the identity of the person making a report of alleged or suspected child abuse or neglect under the following circumstances:

(1) the employee is directly involved with an investigation, case, or other process involving the child who is the subject of the report or the child's parent or the person who has legal custody of the child;

(2) the employee supervises, directly or indirectly an employee described in subsection (a)(1) of this section; or

(3) the employee has a legitimate professional interest in an investigation, case, or other process involving the child who is the subject of the report or the child's parent or other person who has legal custody of the child that requires access to the reporter's identity.

(b) For this section "other process" includes but is not limited to quality assurance, locating a missing child, new and ongoing training of DFPS or SSCC staff, and necessary technical support to maintain or update the case management system.

(c) A reporter's identity is confidential and may only be disclosed if waived in writing by the individual making the report, as provided by Texas Family Code §261.201, or to a law enforcement officer for the purposes of conducting a criminal investigation of the report.

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

Filed with the Office of the Secretary of State on March 11, 2024.



CHAPTER 707. CHILD PROTECTIVE INVESTIGATIONS

SUBCHAPTER A. INVESTIGATIONS

40 TAC §707.489

The Department of Family and Protective Services (DFPS) proposes an amendment to §707.489(c)(1)(D) in Title 40, Texas Administrative Code (TAC), Chapter 707, Subchapter A, relating to Child Protective Services Intake, Investigation, and Assessment.

BACKGROUND AND PURPOSE

In the 88th Texas legislative session the legislature enacted House Bill (HB) 63, which concerns reporting requirements for child abuse and neglect to the Department of Family and Protective Services (DFPS). Specifically, in Section 2 of HB 63, the bill requires DFPS to adopt rules concerning employee access to the identity of an individual who reports child abuse and neglect. Rule amendment 40 TAC §707.489(c)(1)(D) clarifies that investigation tasks performed on anonymous reports pursuant to Texas Family Code §261.304(a) are only those reports that are referred to DFPS by local or state law enforcement.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §707.489(c)(1)(D) clarifies that tasks performed on anonymous reports pursuant to Texas Family Code §261.304 are those reports that are referred to DFPS by local or state law enforcement.

FISCAL NOTE

Lea Ann Biggar, Chief Financial Officer of DFPS, has determined that for each year of the first five years that the section will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the section as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT

DFPS has determined that during the first five years that the proposed rule will be in effect:

- (1) the proposed rule amendment will not create or eliminate a government program;
- (2) implementation of the proposed rule amendment will not affect the number of employee positions;
- (3) implementation of the proposed rule amendment will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the proposed rule amendment will not affect fees paid to the agency;
- (5) the proposed rule amendment will create a new regulation;
- (6) the proposed rule amendment will limit an existing regulation;
- (7) the proposed rule amendment will not change the number of individuals subject to the rule; and

(8) the proposed rule amendment will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Ms. Biggar has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as the rule does not apply to small or micro-businesses, or rural communities.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the section as proposed.

There is no anticipated negative impact on local employment.

There is an anticipated negative impact on local employment.

COSTS TO REGULATED PERSONS

Pursuant to subsection (c)(7) of Texas Government Code §2001.0045, the statute does not apply to a rule that is adopted by the Department of Family and Protective Services

PUBLIC BENEFIT

Ms. Biggar has determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing or administering the section will be implementation of HB 63 of the 88th Texas Regular Legislative Session. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments and questions on this proposal must be submitted within 30 days of publication of the proposal in the *Texas Register*. Electronic comments and questions may be submitted to Christine Steinberg, Statewide Intake, Christine.Steinberg2@dfps.texas.gov or RULES@dfps.texas.gov. Hard copy comments may be submitted to the DFPS Rules Coordinator, Legal Services Sanjuanita Maltos, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030.

STATUTORY AUTHORITY

The rule amendment to section 707.489(c)(1)(D) is authorized pursuant to Texas Human Resources Code (HRC) §40.027, which provides that the DFPS Commissioner shall adopt rules for the operation and provision of services by the agency and

Texas Family Code (TFC) §261.201(n), which directs DFPS to adopt rules concerning employee access to a reporter's identity.

The modification is proposed under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

CROSS REFERENCE TO STATUTES

The rule implements Texas Family Code §263.1021, §261.201(m) and (n) and §261.304(a).

§707.489. *How do we respond to reports of child abuse or neglect?*

(a) When the Statewide Intake (SWI) division of the Texas Department of Family and Protective Services (DFPS) receives a report of alleged abuse or neglect of a child, we may respond with any of the following protective interventions, as further described in this section:

- (1) Closure without assignment for investigation following screening;
- (2) Administrative closure;
- (3) An abbreviated investigation;
- (4) A thorough investigation; or
- (5) An alternative response.

(b) Intake closed without assignment for investigation

(1) SWI screeners may screen out less serious reports of abuse and neglect if they determine after contacting a professional or other credible source that the child's safety can be assured without conducting an investigation or alternative response and the report meets the following criteria:

- (A) the report is assigned a priority other than Priority I;
- (B) there are no alleged victims younger than six; and
- (C) the family does not have an open investigation or alternative response case, and is not receiving services through DFPS.

(2) Both, SWI screeners and Investigations supervisory staff, may close a report without assigning for investigation if they determine, after contacting collateral sources, that the report is not appropriate for an investigation by us for reasons including:

- (A) the reported information has already been investigated in a case closed before the date of the new intake;
- (B) the investigation is the responsibility of an entity other than the Investigations program;
- (C) the report does not give enough information to locate the child or the child's family, after the staff makes reasonable efforts to find additional locating information based on details in the report; or
- (D) the incident does not meet the statutory definitions of abuse or neglect or the situation does not appear to involve a reasonable likelihood that a child will be abused or neglected in the foreseeable future.

(3) If the report of abuse and neglect concerns a child in the conservatorship of DFPS, SWI screeners and Investigations supervisory staff may not screen out the report. However, in the following limited circumstances, SWI screeners may screen out such a report if:

- (A) DFPS has previously investigated all current allegations; or

(B) DFPS lacks jurisdiction to investigate.

(4) Before making a decision to close a report without assignment for investigation or alternative response, SWI screeners and Investigations supervisory staff must consider the following:

(A) the behavior of the family, including a review of all relevant prior history the family has with DFPS and any concerning involvement the family has with other agencies, such as law enforcement or service providers;

(B) the nature of the allegations and other relevant information such as the ages of each child in the home, alleged conditions in the home, and the types and seriousness of any alleged injuries;

(C) whether an alleged victim made an outcry of abuse or neglect; and

(D) any additional information obtained from the reporter or collateral sources.

(c) Administrative closure.

(1) Under certain circumstances, we may administratively close a report which was initially assigned for investigation if we obtain additional information indicating that an investigation is no longer warranted. Criteria we consider when deciding to administratively close an investigation include, but are not limited to, situations in which:

(A) The allegations have already been investigated by us;

(B) The allegations have been refuted based on a credible source and all of the following criteria are met:

(i) There are no previous findings of abuse or neglect against the parent or caregiver in the current investigation or alternative response case;

(ii) We have not received any subsequent reports of abuse or neglect of any alleged victim, with the exception of reports that involve the same incidents and allegations as in the original report;

(iii) After contacting a professional or other credible sources with direct knowledge about the child's condition, we have determined that the child's safety can be assured without further assessment, response, services, or assistance; and

(iv) we determine that no abuse or neglect occurred.

(C) We do not have jurisdiction to conduct the investigation because:

(i) Another authorized entity, such as law enforcement or another state agency, has jurisdiction to conduct the investigation;

(ii) The alleged victim is not a child or was not born alive; or

(iii) The abuse or neglect, a danger, or risk of abuse or neglect is not occurring in Texas.

(D) The investigation was initiated on the basis of an anonymous report referred by local or state law enforcement and after completing any necessary initial tasks, including any required interviews or collateral contacts, we determine that:

(i) There is no corroborating evidence; and

(ii) A parent has taken actions to protect the alleged victims from any identified dangers.

(2) If an investigation has been open for more than sixty days after the date of the intake, the supervisor must administratively close the investigation if all the following criteria are met:

(A) There are no previous findings of abuse or neglect against the parent or caregiver in the current investigation or alternative response case;

(B) We have not received any additional reports of abuse or neglect of any alleged victim, with the exception of reports that involve the same incidents and allegations as in the original report;

(C) After contacting a professional or other credible sources with direct knowledge about the child's condition, the supervisor determined that the child's safety can be assured without further investigation, response, services, or assistance;

(D) No abuse or neglect occurred;

(E) Closing the case would not expose the child to undue risk of harm; and

(F) The program director reviews and determines that administratively closing the case is appropriate.

(3) Exception. Notwithstanding the criteria in subparagraph (B) of paragraph 1 of this subsection, if we have made contact with the alleged victim or alleged perpetrator, the investigation is not eligible for administrative closure under subparagraph (B). However, the case may still be eligible for other types of administrative closure or abbreviated rule out, if applicable.

(d) Abbreviated investigation with a disposition of "ruled out".

(1) Cases assigned for investigation may be handled with an abbreviated investigation with findings of "ruled out", if we determine that no abuse or neglect has occurred and the child's safety can be assured without further investigation, response, services or assistance. We may submit an investigation as an abbreviated rule out, which does not require completing the formal risk assessment tool, when all of the following criteria in addition to any other criteria defined policy are met:

(A) There are no previous findings of abuse or neglect against the parent or caregiver in the current investigation or alternative response case;

(B) We have not received any subsequent reports of abuse or neglect of any alleged victim unless the new report involves the same incident(s) and allegation(s) under investigation; and

(C) The reporter is not anonymous.

(2) We must at a minimum perform the following tasks before submitting the investigation as an abbreviated rule out:

(A) Interview and visually inspect each alleged victim;

(B) Interview at least one parent or other person with primary or legal responsibility for each alleged victim;

(C) Complete a safety assessment and document whether any noted dangers are controlled by protective actions that have been or will be taken by the child's parent or other person with primary or legal responsibility for the child; and

(D) Conduct any required home visit.

(e) Thorough investigation.

(1) Except as provided in subsection (f) of this section and division 2 of this subchapter (relating to Alternative Response), we must complete a thorough investigation if we obtain information indicating that:

(A) There are dangers to the child because of abuse or neglect;

(B) Risk of abuse or neglect is indicated; or

(C) Based on information in the report and any initial contacts, it is impossible to determine whether or not there are dangers to the child because of abuse or neglect or whether risk of abuse or neglect is indicated.

(2) Before closing a thorough investigation, we must at a minimum perform the following tasks:

(A) Interview each alleged victim child;

(B) Interview at least one of the parents or other person with primary or legal responsibility for the victim child;

(C) Interview each alleged perpetrator;

(D) Interview other individuals who have information that is relevant or potentially relevant to the report of abuse or neglect;

(E) Complete a safety assessment and document whether any noted dangers are controlled by protective actions that have been or will be taken by the child's parent or other person with primary or legal responsibility for the child, unless the investigation relates to a deceased child and there is no other child in the home; and

(F) Assess the risk of future abuse or neglect, unless the investigation relates to a deceased child and there is no other child in the home.

(f) Alternative response. An alternative response is a protective intervention governed by division 2 of this subchapter and Texas Family Code, §261.3015, that involves an assessment of the family, including a safety assessment, and provision of necessary services and supports. Alternative response does not result in a formal finding of abuse or neglect or the designation of a perpetrator.

(g) Exceptions to required interviews. We are not required to conduct an interview to close an abbreviated or thorough investigation as described in subsections (c) and (d) of this section if we exhaust all reasonable efforts to conduct the interview but are unable to do so because:

(1) The person to be interviewed is unable to be interviewed because of age or other exceptional circumstance;

(2) The person to be interviewed, the person's parent or other legal guardian, or the attorney representing the person refuses to permit the interview;

(3) The alleged perpetrator has been arrested or is under investigation by a law enforcement agency and the interview would interfere with the investigation or violate the alleged perpetrator's rights; or, the alleged perpetrator is detained and the jail, prison, or other detention facility in which the alleged perpetrator is detained will not permit the interview; or

(4) The person to be interviewed has been interviewed by another entity and we accept the substitute interview. If the person, the person's parent or other legal guardian, or the attorney representing the person requests that the person also be interviewed by us, the investigator must conduct one supplemental interview.

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

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Quyona Gregg
Rules Coordinator
Department of Family and Protective Services
Earliest possible date of adoption: April 28, 2024
For further information, please call: (512) 929-6633

