

# ADOPTED RULES

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

## TITLE 16. ECONOMIC REGULATION

### PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

#### CHAPTER 45. MARKETING PRACTICES SUBCHAPTER A. GENERAL PROVISIONS

##### 16 TAC §45.4

The Texas Alcoholic Beverage Commission (TABC) adopts amendments to 16 TAC §45.4, relating to Product Registration Required. The amendments are adopted without changes to the proposed text as published in the February 9, 2024, issue of the *Texas Register* (49 TexReg 619). The amended rule will not be republished.

**REASONED JUSTIFICATION.** The amendments are necessary to implement legislation. Senate Bill 1322 (88th Regular Session) authorized the sale of vintage distilled spirits by a vintage distilled spirits seller, and Senate Bill 1932 (88th Regular Session) authorized the secondary sale of wine by a wine collection seller.

Currently, §45.4(a) prohibits alcoholic beverages from being sold in the state prior to the product being registered with TABC unless the type of alcoholic beverage is excepted from the registration requirement under §45.4(b). Pursuant to §101.671 of the Alcoholic Beverage Code, distilled spirits and wine are generally required to have a Certificate of Label Approval (COLA) issued by the United States Alcohol and Tobacco Tax and Trade Bureau to be registered with TABC and the registrant must be an authorized TABC permittee. Pursuant to §§1.04(31)(B) and 111.001(2)(B) of the Alcoholic Beverage Code, vintage distilled spirits sellers and wine collection sellers may not hold a TABC-issued permit. Thus, due to the nature of the distilled spirits and wine authorized by SB 1322 and SB 1932, the products are ineligible to receive a COLA and the authorized sellers are unable to apply for product registration. For these reasons, requiring registration of these products would be impracticable under the current regulatory framework. Therefore, the amendments to §45.4 add products sold by a vintage distilled spirits seller pursuant to Alcoholic Beverage Code §§22.19 or 23.07, and by a wine collection seller pursuant to Alcoholic Beverage Code §§111.002 or 111.003, to the list of products that do not require registration with TABC prior to being sold within the state.

**SUMMARY OF COMMENTS.** TABC did not receive any comments on the proposed amendments.

**STATUTORY AUTHORITY.** TABC adopts the amendments under §5.31 of the Alcoholic Beverage Code, which authorizes TABC to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code. TABC also adopts

new §45.4(b)(5) pursuant to Section 2 of SB 1932, which requires TABC to adopt rules necessary to implement Chapter 111 of the Alcoholic Beverage Code.

**CERTIFICATION.** The amended rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

Filed with the Office of the Secretary of State on March 26, 2024.

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Matthew Cherry

Senior Counsel

Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3491



## TITLE 26. HEALTH AND HUMAN SERVICES

### PART 1. HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 303. PREADMISSION SCREENING AND RESIDENT REVIEW (PASRR)

The Texas Health and Human Services Commission (HHSC) adopts amendments to §303.102, concerning Definitions; §303.201, concerning Preadmission Process; §303.302, concerning LIDDA, LMHA, and LBHA Responsibilities Related to the PASRR Process; §303.303, concerning Qualifications and Requirements for Staff Person Conducting a PE or Resident Review; §303.502, concerning Required Training for a Habilitation Coordinator; §303.503, concerning Documenting Habilitation Coordination Contacts; §303.601, concerning Habilitation Coordination for a Designated Resident; §303.602, concerning Service Planning Team Responsibilities Related to Specialized Services; §303.701, concerning Transition Planning for a Designated Resident; §303.703, concerning Requirements for Service Coordinators Conducting Transition Planning; §303.905, concerning Process for Service Initiation, §303.907, concerning Renewal and Revision of Person-Centered Recovery Plan, §303.909, concerning Refusal of the Uniform Assessment or MI Specialized Services; §303.910, concerning Suspension and Termination of MI Specialized Services; and §303.912, concerning Documentation.

HHSC adopts new §303.901, concerning Description of MI Specialized Services and §303.914, concerning Required Training for an LMHA or LBHA Staff Responsible for Coordinating MI Specialized Services and new Subchapter J, concerning Disaster Rule Flexibilities, comprised of §303.1000, concerning Flexibilities to Certain Requirements During Declaration of Disaster.

HHSC also adopts the repeal of §303.901, Description of MI Specialized Services.

Sections 303.102, 303.601, 303.602, 303.701, 303.901, 303.905, 303.907, 303.909, and 303.1000 are adopted with changes to the proposed text as published in the October 20, 2023, issue of the *Texas Register* (48 TexReg 6174). These rules will be republished.

Sections 303.201, 303.302, 303.303, 303.502, 303.503, 303.703, 303.910, 303.912, 303.914, and the repeal of §303.901 are adopted without changes to the proposed text as published in the October 20, 2023, issue of the *Texas Register* (48 TexReg 6174). These rules will not be republished.

## BACKGROUND AND JUSTIFICATION

House Bill 4, 87th Legislature, Regular Session, 2021 added §531.02161 to the Texas Government Code which requires HHSC to ensure that Medicaid recipients have the option to receive services through telecommunications to the extent it is cost effective and clinically appropriate. A purpose of the adopted rules is to implement Texas Government Code §531.02161 as it applies to the preadmission screening and resident review (PASRR) process. Another purpose of the adopted rules is to define terms used in the revised PASRR rule for clarification. The adopted rules ensure training requirements are similar for staff involved in the PASRR process across all local intellectual and developmental disability authorities (LIDDAs), local mental health authorities (LMHAs), and local behavioral health authorities (LBHAs). The adopted rules address documentation requirements related to the PASRR process, including the new requirement to obtain written or oral consent for the use of audio-visual or audio-only communication methods. The adopted rules require adjustments to the frequency of follow-up visits for residents with mental illness (MI), which mirrors the requirements of the habilitation coordinator related to the PASRR process. The adopted rules also require the MI specialized services team to agree the resident with MI no longer benefits from the MI specialized services when one or more specialized service is terminated.

The adopted rules provide that HHSC may allow LIDDAs, LMHAs, and LBHAs to use one or more of the exceptions specified in the rules while an executive order or proclamation declaring a state of disaster under Texas Government Code §418.014 is in effect. This provision ensures that LIDDAs, LMHAs, LBHAs are able to operate and provide services effectively during a disaster.

The adopted rules repeal §303.901, Description of MI Specialized Services, and replace it with new §303.901, Description of MI Specialized Services.

## COMMENTS

The 31-day comment period ended November 20, 2023.

During this period, HHSC received comments regarding the proposed rules from five commenters: Cross Healthcare Management; Tri-County Behavioral Healthcare; Texas Medical Association; Disability Rights Texas; and Texas Council of Commu-

nity Centers. A summary of comments relating to the rules and HHSC's responses follows.

**Comment:** A commenter noted they are in support of the rule changes as long as there are not additional burdens imposed on the nursing facility, such as having to make separate arrangements to coordinate audio-only or audio-visual meetings.

**Response:** HHSC did not make changes to the rules in response to this comment. The rule changes do not impose additional burdens on nursing facilities.

**Comment:** Regarding the definition of Service Planning Team (SPT), a commenter asked for clarification regarding the inclusion of the person who develops a permanency plan in the service planning team definition.

**Response:** HHSC did not make changes to the rules in response to this comment. The commenter did not specify the clarification requested and the definition of "service planning team" describes this member of the team as "the person who develops a permanency plan using the HHSC Permanency Planning Instrument for Children Under 22 Years of Age form and performs other permanency planning activities for a designated resident under 22 years of age, if the designated resident is at least 21 years of age but younger than 22 years of age."

**Comment:** Regarding the definition of SPT, the same commenter asked if the person completing the permanency plan must participate in all service planning team meetings or only when the permanency plan is due.

**Response:** HHSC did not make changes to the rules in response to this comment. The proposed rules do not allow for the exclusion of the person who develops the permanency plan from a service planning team meeting.

**Comment:** A commenter asked whether the service planning team member who is the permanency planner must participate in all service planning team meetings and whether this member must provide the permanency planning instrument to the service planning team.

**Response:** HHSC did not make changes to the rules in response to this comment. The proposed rules do not allow for the exclusion of the person who develops the permanency plan from a service planning team meeting. Responsibilities of persons who develop the permanency plan are not addressed in Chapter 303 but a person who develops the permanency plan would likely assist with providing the permanency planning instrument to the service planning team.

**Comment:** A commenter recommended deleting §303.302(d), because there are other PASRR requirements already in place to address barriers and challenges. The LIDDA, LMHA, or LBHA must develop a written policy that describes the process the LIDDA, LMHA, or LBHA will follow to address challenges related to the participation in receiving IDD habilitative specialized services (IHSS) or MI specialized services by the designated resident, resident with MI, or legally authorized representative (LAR).

**Response:** HHSC declines to remove this rule as suggested. Section 303.302(d) requires a process to address challenges related to a resident's participation in receiving IHSS or MI specialized services. Other PASRR requirements address barriers to community living and transitions into the community.

**Comment:** Regarding §303.502(a)(2) - (3), commenters recommended allowing habilitation coordinators to complete HHSC ap-

proved computer-based person-centered planning and practices training and all HHSC instructor-led training related to PASRR habilitation coordination within the first 90 days of performing habilitation coordination duties, rather than 60 days, due to difficulties at times in enrolling staff in instructor-led courses.

Response: HHSC declines to make changes in response to this comment. The HHSC approved person-centered planning and practices training is computer-based and can be taken at any time to easily accommodate habilitation coordinators' schedules. In addition, HHSC will be offering the instructor-led training more frequently to address the demand for this training.

Comment: In reference to §303.601(a), commenters suggested clarification is needed as to whether the rule should indicate "business days" or "calendar days."

Response: HHSC agrees with the requested change and revised §303.601(a) to specify that a LIDDA must assign a habilitation coordinator to each designated resident within "two business days" (instead of "two days") after a PASRR level II evaluation (PE) is completed if the PE is positive for intellectual disability or developmental disability. Additionally, HHSC revised §303.102 by adding definitions for "business day" and "calendar day" for clarity.

Comment: Regarding §303.601(b)(7)(A), a commenter suggested that the "more frequently if needed more than monthly" language be retained, because some individuals may require visits that are more frequent than monthly.

Response: HHSC declines to make changes in response to this comment. The requirement in the rule that a habilitation coordinator must meet with a designated resident "at least monthly" is a minimum requirement and, therefore, allows for more frequent meetings if necessary.

Comment: Regarding §303.703(b)(2) - (3), commenters recommended allowing the service coordinators to complete HHSC approved computer-based person-centered planning and practices training and all HHSC instructor-led training related to PASRR service coordination for transition planning within the first 90 days of performing transition planning duties, rather than 60 days, due to difficulties at times enrolling staff in instructor-led courses.

Response: HHSC declines to make changes in response to this comment. The HHSC approved person-centered planning and practices training is computer-based and can be taken at any time to easily accommodate service coordinators' schedules. In addition, HHSC will be offering the instructor-led training more frequently to address the demand for this training.

Comment: A commenter noted that "crisis intervention services" and "day programs for acute needs" are included in current §303.901 but not in proposed §303.901(b), though such services are offered under the Texas Resiliency and Recovery (TRR) program. The commenter also noted that proposed §303.901(b) does not reference the TRR Utilization Management Guidelines (TRR Guidelines) in its description of services for a resident with MI. As a result, the commenter noted concerns that it is not clear what services, if any, are available outside of the services listed in proposed §303.901(b)(1) through (5). The commenter recommended that proposed §303.901(b) be amended to clarify the availability of other services offered under the TRR program, such as day programs for acute needs.

Response: The definition of "MI specialized services" in §303.102(50) includes a non-exclusive list of MI specialized

services available and provides that the services are described in the Texas Resilience and Recovery Utilization Management Guidelines. Descriptions of some MI specialized services are included in §303.901(b) because those services are the MI specialized services most commonly used. HHSC revised §303.901(b) to clarify that the subsection describes some of the MI specialized services.

Comment: A commenter noted that in the proposed rules, a meeting via audio-visual communication is permitted in extenuating circumstances if consent is obtained from the resident or their LAR to meet via audio-visual communication and a description of the extenuating circumstances is documented in the resident's record. The rules as proposed state that, if consent is not obtained, the resident or LAR's refusal must be documented in the resident's record. The commenter recommended that proposed §§303.302, 303.602, 303.701, 303.905, and 303.907 be clarified to account for situations where the resident or LAR has refused to or neglected to provide consent to meet via audio-visual communication despite extenuating circumstances that preclude an in-person meeting.

Response: HHSC agrees with the requested change as to §§303.602, 303.701, 303.905, and 303.907. Accordingly, HHSC revised §303.602(g) to, if consent to meet via audio-visual communication is not obtained because of extenuating circumstances, require a habilitation coordinator to convene an SPT meeting in person as soon as possible after the extenuating circumstances no longer exist. HHSC made a similar change in §§303.701(k), 303.905(h) and 303.907(h) regarding meetings conducted by a service coordinator, LMHA, LBHA, and a qualified mental health professional - community services (QMHP-CS). HHSC declines to make the requested change to §303.302 because §303.302(i) describes the action a LIDDA, LMHA, or LBHA must take if consent to meet via audio-visual communication is not obtained because of extenuating circumstances. Also, the definition for "extenuating circumstances" in §303.102 was modified for clarity.

Comment: A commenter disagreed with the proposed change in §303.909(a)(2) and stated a concern that waiting for 90 days for a follow-up visit may be too long. Conversely, another commenter agreed with the proposed change.

Response: HHSC agrees with the requested change and revised §303.909(a)(2) to require the LMHA or LBHA to inform the resident that a follow-up visit will be conducted every 30 days for 90 days after the initial interdisciplinary team (IDT) meeting, consistent with the current rule. HHSC also revised §303.909(a) to clarify that the LMHA and LBHA are required to conduct a follow-up visit every 30 days for 90 days after the initial IDT meeting and make the 90th day follow-up visit the first MI quarterly meeting.

Comment: Regarding §303.914(a)(2), commenters suggested a revision to the timeframe in which an LMHA or LBHA staff must complete the HHSC approved computer-based person-centered planning and practices training within the first 90 days of coordinating MI specialized services instead of the proposed 60-day timeframe.

Response: HHSC declines to revise the rule as suggested. The commenter did not provide a reason for changing the time frame for completing the HHSC approved person-centered planning and practices training. Because the training can be taken at any time to easily accommodate staff schedules, the proposed

60-day timeframe should provide staff with sufficient time to complete the training.

Comment: A commenter noted they would like to see HHSC courses that align more closely with TRR services instead of those designed for the IDD population.

Response: HHSC did not make changes in response to this comment because it is outside the scope of this project.

Comment: Regarding §303.905(c), a commenter asked for clarification regarding the timeline for completing the uniform assessment, developing the person-centered recovery plan, and providing copies of these documents to the nursing facility.

Response: HHSC did not make changes in response to this comment. Section 303.905(c) and (f) include the timeframes for completing the uniform assessment and the person-centered recovery plan and providing copies of these documents to the nursing facility. Additional guidance about these activities is provided in the Preadmission Screening and Resident Review Mental Illness Handbook. Further, definitions for "business day" and "calendar day" were added to §303.102 for clarity.

In addition to the changes made to the rules in response to comments, HHSC made the changes below.

In §303.907(a), HHSC added, "with the MI specialized services team" to clarify that the QMHP-CS must include the team in the quarterly meeting.

In §303.901(b), HHSC changed "specialized services" to "MI specialized services" because "MI specialized services" is the defined term and used throughout the chapter.

HHSC revised §303.102(78)(G) and (H) to correct formatting, revised §303.1000(c)(3) and (4) to add section symbols to the section numbers, and added a comma to newly formatted §303.909(a)(4) for clarity.

## SUBCHAPTER A. GENERAL PROVISIONS

### 26 TAC §303.102

#### STATUTORY AUTHORITY

The amendment is 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 §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

#### §303.102. Definitions.

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

(1) **Actively involved person**--An individual who has significant, ongoing, and supportive involvement with a designated resident, as determined by the SPT based on the individual's:

(A) observed interactions with the designated resident;

(B) availability to the designated resident for assistance or support when needed; and

(C) knowledge of, sensitivity to, and advocacy for the designated resident's needs, preferences, values, and beliefs.

(2) **Acute care hospital**--A health care facility in which an individual receives short-term treatment for a severe physical injury or episode of physical illness, an urgent medical condition, or recovery from surgery and:

(A) may include a long-term acute care hospital, an emergency room within an acute care hospital, or an inpatient rehabilitation hospital; and

(B) does not include a stand-alone psychiatric hospital or a psychiatric hospital within an acute care hospital.

(3) **Alternate placement assistance**--Assistance provided to a resident to locate and secure services chosen by the resident or LAR that meets the resident's needs in a setting other than a NF. Alternate placement assistance includes transition planning, pre-move site review, and post-move monitoring.

(4) **APRN**--Advance practice registered nurse. An individual licensed to practice professional nursing as an advance practice registered nurse in accordance with Texas Occupations Code Chapter 301.

(5) **Audio-only**--An interactive, two-way audio communication that uses only sound and that meets the privacy requirements of the Health Insurance Portability and Accountability Act. Audio-only includes the use of telephonic communication. Audio-only does not include audio-visual or in-person communication.

(6) **Audio-visual**--An interactive, two-way audio and video communication that conforms to privacy requirements under the Health Insurance Portability and Accountability Act. Audio-visual does not include audio-only or in-person communication.

(7) **Behavioral support**--An IHSS that:

(A) is assistance provided for a designated resident to increase adaptive behaviors and to replace or modify maladaptive behaviors that prevent or interfere with the designated resident's interpersonal relationships across all service and social settings;

(B) is delivered in the NF or in a community setting; and

(C) consists of:

(i) assessing the behaviors to be targeted in an appropriate behavior support plan and analyzing those assessment findings;

(ii) developing an individualized behavior support plan that reduces or eliminates the target behaviors, assisting the designated resident in achieving the outcomes identified in the HSP;

(iii) training and consulting with the LAR, family members, NF staff, other support providers, and the designated resident about the purpose, objectives, and methods of the behavior support plan;

(iv) implementing the behavior support plan or revisions to the behavior support plan and documenting service delivery in accordance with the IDD Habilitative Specialized Services Billing Guidelines;

(v) monitoring and evaluating the success of the behavior support plan implementation;

(vi) revising the behavior support plan as necessary; and

(vii) participating in SPT and IDT meetings.

(8) Business day--Any day except Saturday, Sunday, or a national or state holiday listed in Texas Government Code §662.003(a) or (b).

(9) Calendar day--Any day, including weekends and holidays.

(10) CMWC--Customized manual wheelchair. In accordance with §554.2703(5) of this title (relating to Definitions) and consistent with the requirements of Texas Human Resources Code §32.0425, a wheelchair that consists of a manual mobility base and customized seating system and is adapted and fabricated to meet the individualized needs of a designated resident.

(11) Collateral contact--A person who is knowledgeable about the individual seeking admission to a NF or the resident, such as family members, previous providers or caregivers, and who may support or corroborate information provided by the individual or resident.

(12) Coma--A state of unconsciousness characterized by the inability to respond to sensory stimuli as documented by a physician.

(13) Convalescent care--A type of care provided after an individual's release from an acute care hospital that is part of a medically prescribed period of recovery.

(14) Day habilitation--An IHSS that:

(A) is assistance provided for a designated resident to acquire, retain, or improve self-help, socialization, and adaptive skills necessary to successfully and actively participate in all service and social settings;

(B) is delivered in a setting other than the designated resident's NF;

(C) does not include services provided under the Day Activity and Health Services program;

(D) includes expanded interactions, skills training activities, and programs of greater intensity or frequency beyond those a NF is required to provide by 42 Code of Federal Regulations (CFR) §483.24; and

(E) consists of:

(i) individualized activities consistent with achieving the outcomes identified in a designated resident's HSP to attain, learn, maintain, or improve skills;

(ii) activities necessary to reinforce therapeutic outcomes targeted by other support providers and other specialized services;

(iii) services in a group setting at a location other than a designated resident's NF for up to five days per week, six hours per day, on a regularly scheduled basis;

(iv) personal assistance for a designated resident who cannot manage personal care needs during the day habilitation activity;

(v) transportation between the NF and the day habilitation site, as well as during the day habilitation activity necessary for a designated resident's participation in day habilitation activities; and

(vi) participating in SPT and IDT meetings.

(15) DD--Developmental disability. A disability that meets the criteria described in the definition of "persons with related conditions" in 42 CFR §435.1010.

(16) Delirium--A serious disturbance in an individual's mental abilities that results in a decreased awareness of the individual's environment and confused thinking.

(17) Designated resident--An individual:

(A) whose PE or resident review is positive for ID or DD;

(B) who is 21 years of age or older;

(C) who is a Medicaid recipient; and

(D) who is a resident or has transitioned to the community from a NF within the previous 365 days.

(18) DME--Durable medical equipment. The items described in §554.2703(10) of this title.

(19) Emergency protective services--Services furnished by the Department of Family and Protective Services to an elderly or disabled individual who has been determined to be in a state of abuse, neglect, or exploitation.

(20) Employment assistance--An IHSS that:

(A) is assistance provided for a designated resident who requires intensive help locating competitive employment in the community; and

(B) consists of:

(i) identifying a designated resident's employment preferences, job skills, and requirements for a work setting and work conditions;

(ii) locating prospective employers offering employment compatible with a designated resident's identified preferences, skills, and requirements;

(iii) contacting prospective employers on a designated resident's behalf and negotiating the designated resident's employment;

(iv) transporting a designated resident between the NF and the site where employment assistance services are provided and as necessary to help the designated resident locate competitive employment in the community; and

(v) participating in SPT and IDT meetings.

(21) Essential supports--Those supports identified in a transition plan that are critical to a designated resident's health and safety and that are directly related to a designated resident's successful transition to living in the community from residing in a NF.

(22) Exempted hospital discharge--A category of NF admission that occurs when a physician has certified that an individual who is being discharged from an acute care hospital is likely to require less than 30 days of NF services for the condition for which the individual was hospitalized.

(23) Expedited admission--A category of NF admission that occurs when an individual meets the criteria for one of the following categories: convalescent care, terminal illness, severe physical illness, delirium, emergency protective services, respite, or coma.

(24) Extenuating circumstances--Circumstances beyond the LIDDA's, LMHA's or LBHA's control that prevents meeting in person. A disaster declared by the governor is excluded from this definition.

(25) Habilitation coordination--Assistance for a designated resident residing in a NF to access appropriate specialized services nec-

essary to achieve a quality of life and level of community participation acceptable to the designated resident and LAR on the designated resident's behalf.

(26) Habilitation coordinator--An employee of a LIDDA who provides habilitation coordination.

(27) HHSC--The Texas Health and Human Services Commission.

(28) HHSC instructor-led training--Training delivered by an HHSC employee.

(29) HSP--Habilitation service plan. A plan developed by the SPT while a designated resident is residing in a NF that:

(A) is individualized and developed through a person-centered approach;

(B) identifies the designated resident's:

(i) strengths;

(ii) preferences;

(iii) desired outcomes; and

(iv) psychiatric, behavioral, nutritional management, and support needs as described in the NF comprehensive care plan or MDS assessment; and

(C) identifies the specialized services that will accomplish the desired outcomes of the designated resident, or the LAR's on behalf of the designated resident, including amount, frequency, and duration of each service.

(30) ID--Intellectual disability, as defined in 42 CFR §483.102(b)(3)(i).

(31) IDD--Intellectual and developmental disability.

(32) IDT--Interdisciplinary team. A team consisting of:

(A) a resident with MI, ID, or DD;

(B) the resident's LAR, if any;

(C) an RN from the NF with responsibility for the resident;

(D) a representative of:

(i) the LIDDA, if the resident has ID or DD;

(ii) the LMHA or LBHA, if the resident has MI; or

(iii) the LIDDA and the LMHA or LBHA, if the resident has MI and DD, or MI and ID; and

(E) others as follows:

(i) a concerned person whose inclusion is requested by the resident or LAR;

(ii) an individual specified by the resident, LAR, NF, LIDDA, LMHA, or LBHA, as applicable, who is professionally qualified, certified, or licensed with special training and experience in the diagnosis, management, needs, and treatment of people with MI, ID, or DD; and

(iii) a representative of the appropriate school district if the resident is school age and inclusion of the district representative is requested by the resident or LAR.

(33) IHSS--IDD habilitative specialized services. IHSS are:

(A) behavioral support;

(B) day habilitation;

(C) employment assistance;

(D) independent living skills training; and

(E) supported employment.

(34) ILST--Independent living skills training. An IHSS that:

(A) is assistance provided for a designated resident that is consistent with the designated resident's HSP;

(B) is provided in the designated resident's NF or in a community setting;

(C) includes expanded interactions, skills training activities, and programs of greater intensity or frequency beyond those a NF is required to provide by 42 CFR §483.24; and

(D) consists of:

(i) habilitation and support activities that foster improvement of or facilitate a designated resident's ability to attain, learn, maintain, or improve functional living skills and other daily living activities;

(ii) activities that help preserve the designated resident's bond with family members;

(iii) activities that foster inclusion in community activities generally attended by people without disabilities;

(iv) transportation to facilitate a designated resident's employment opportunities and participation in community activities, and between the designated resident's NF and a community setting; and

(v) participating in SPT and IDT meetings.

(35) Implementation plan--A plan for each IHSS on the designated resident's plan of care that includes:

(A) a list of the designated resident's outcomes identified in the HSP that will be addressed using IHSS;

(B) specific objectives to address the outcomes required by subparagraph (A) of this paragraph that are:

(i) observable, measurable, and outcome-oriented;

and

(ii) derived from assessments;

(C) a target date for completion of each objective;

(D) the frequency, amount, and duration of IHSS needed to complete each objective; and

(E) the signature and date of the designated resident, LAR, and service provider agency.

(36) In-person (or in person)--Within the physical presence of another person. In-person or in person does not include audio-visual or audio-only communication.

(37) LAR--Legally authorized representative. An individual authorized by law to act on behalf of an individual seeking admission to a NF or resident with regard to a matter described by this chapter, and who may be the parent of a minor child, the legal guardian, or the surrogate decision maker.

(38) LBHA--Local behavioral health authority. An entity designated by the executive commissioner of HHSC, in accordance with Texas Health and Safety Code §533.0356.

(39) LCSW--Licensed clinical social worker. An individual who is licensed as a licensed clinical social worker in accordance with Texas Occupations Code Chapter 505.

(40) Licensed psychologist--An individual who is licensed as a psychologist in accordance with Texas Occupations Code Chapter 501.

(41) LIDDA--Local intellectual and developmental disability authority. An entity designated by the executive commissioner of HHSC, in accordance with Texas Health and Safety Code §533A.035.

(42) LMFT--Licensed marriage and family therapist. An individual who is licensed as a marriage and family therapist in accordance with Texas Occupations Code Chapter 502.

(43) LMHA--Local mental health authority. An entity designated by the executive commissioner of HHSC, in accordance with Texas Health and Safety Code §533.035.

(44) LPC--Licensed professional counselor. An individual who is licensed as a professional counselor in accordance with Texas Occupations Code Chapter 503.

(45) LTC online portal--Long term care online portal. A web-based application used by Medicaid providers to submit forms, screenings, evaluations, and other information.

(46) MCO service coordinator--Managed care organization service coordinator. The staff person assigned by a resident's Medicaid managed care organization to ensure access to and coordination of needed services.

(47) MDS assessment--Minimum data set assessment. A standardized collection of demographic and clinical information that describes a resident's overall condition, which a licensed NF in Texas is required to submit for a resident admitted into the facility.

(48) MI--Mental illness. Serious mental illness, as defined in 42 CFR §483.102(b)(1).

(49) MI quarterly meeting--A quarterly meeting that is convened by the LMHA or LBHA for a resident with MI to develop, review, or revise the PCRCP and the transition plan, if the resident is transitioning to the community.

(50) MI specialized services--Specialized services for a resident with MI, if eligible, as described in the Texas Resilience and Recovery Utilization Management Guidelines, including:

- (A) crisis intervention services;
- (B) day programs for acute needs;
- (C) medication training and support services;
- (D) psychiatric diagnostic interview examination;
- (E) psychosocial rehabilitation services;
- (F) routine case management; and
- (G) skills training and development.

(51) NF--Nursing facility. A Medicaid-certified facility that is licensed in accordance with the Texas Health and Safety Code Chapter 242.

(52) NF comprehensive care plan--A comprehensive care plan, defined in §554.2703(3) of this title.

(53) NF PASRR support activities--Actions a NF takes in coordination with a LIDDA, LMHA, or LBHA to facilitate the successful provision of an IHSS or MI specialized service, including:

(A) arranging transportation for a NF resident to participate in an IHSS or a MI specialized service outside the facility;

(B) sending a resident to a scheduled IHSS or MI specialized service with food and medications required by the resident; and

(C) stating in the NF comprehensive care plan an agreement to avoid, when possible, scheduling NF services at times that conflict with IHSS or MI specialized services.

(54) NF specialized services--The following specialized services available to a resident with ID or DD:

- (A) therapy services;
- (B) CMWC; and
- (C) DME.

(55) PA--Physician assistant. An individual who is licensed as a physician assistant in accordance with Texas Occupations Code Chapter 204.

(56) PASRR--Preadmission screening and resident review. A federal requirement in 42 CFR Part 483, Subpart C that requires states to prescreen all individuals seeking admission to a Medicaid-certified NF for ID, DD, and MI.

(57) PCRCP--Person-centered recovery plan. For a resident with MI, the PCRCP identifies the services and supports that are needed to:

- (A) meet the needs of the resident with MI;
- (B) achieve the desired outcomes; and
- (C) maximize the ability for the resident with MI to live successfully in the most integrated setting possible.

(58) PE--PASRR level II evaluation. An evaluation as described in §303.302(a)(2) of this chapter (relating to LIDDA, LMHA, and LBHA Responsibilities Related to the PASRR Process):

(A) of an individual seeking admission to a NF who is suspected of having MI, ID, or DD; and

(B) performed by a LIDDA, LMHA, or LBHA to determine if the individual has MI, ID, or DD and, if so, to:

- (i) assess the individual's need for care in a NF;
- (ii) assess the individual's need for specialized services; and
- (iii) identify alternate placement options.

(59) Physician--An individual who is licensed to practice medicine in accordance with Texas Occupations Code Chapter 155.

(60) PL1--PASRR level I screening. The process of screening an individual seeking admission to a NF to identify whether the individual is suspected of having MI, ID, or DD.

(61) Plan of care--A written plan that includes:

(A) the IHSS required by the NF baseline care plan or NF comprehensive care plan;

(B) the frequency, amount, and duration of each IHSS to be provided for the designated resident during a plan year; and

(C) the services and supports to be provided for the designated resident through resources other than PASRR.

(62) Preadmission process--A category of NF admission:

(A) from a community setting, such as a private home, an assisted living facility, a group home, a psychiatric hospital, or jail, but not an acute care hospital or another NF; and

(B) that is not an expedited admission or an exempted hospital discharge.

(63) QIDP--Qualified intellectual disability professional. An individual who meets the qualifications described in 42 CFR §483.430(a).

(64) QMHP-CS--Qualified mental health professional-community services. An individual who meets the qualifications of a QMHP-CS as defined in §301.303 of this title (relating to Definitions).

(65) Referring entity--The entity that refers an individual to a NF, such as a hospital, attending physician, LAR or other personal representative selected by the individual, a family member of the individual, or a representative from an emergency placement source, such as law enforcement.

(66) Relocation specialist--An employee or contractor of an MCO who provides outreach and relocation activities to individuals in NFs who express a desire to transition to the community.

(67) Resident--An individual who resides in a NF.

(68) Resident review--An evaluation of a resident performed by a LIDDA, LMHA, or LBHA as described in §303.302(a)(2) of this chapter (relating to LIDDA, LMHA, and LBHA Responsibilities Related to the PASRR Process):

(A) for a resident whose PE is positive for MI, ID, or DD who experienced a significant change in condition, to:

(i) assess the resident's need for continued care in a NF;

(ii) assess the resident's need for specialized services; and

(iii) identify alternate placement options; and

(B) for a resident suspected of having MI, ID, or DD, to determine whether the resident has MI, ID, or DD and, if so:

(i) assess the resident's need for continued care in a NF;

(ii) assess the resident's need for specialized services; and

(iii) identify alternate placement options.

(69) Resident with MI--An individual:

(A) who is a resident of a NF;

(B) whose PE or resident review is positive for MI;

(C) who is at least 18 years of age; and

(D) who is a Medicaid recipient.

(70) Respite--Services provided on a short-term basis to an individual because of the absence of or the need for relief by the individual's unpaid caregiver for a period not to exceed 14 days.

(71) RN--Registered nurse. An individual licensed to practice professional nursing as a registered nurse in accordance with Texas Occupations Code Chapter 301.

(72) Service coordination--Assistance in accessing medical, social, educational, and other appropriate services and supports, including alternate placement assistance, that will help an individual to

achieve a quality of life and community participation acceptable to the individual and LAR on the individual's behalf.

(73) Service coordinator--An employee of a LIDDA who provides service coordination.

(74) Service provider agency--An entity that has a contract with HHSC to provide IHSS for a designated resident.

(75) Severe physical illness--An illness resulting in ventilator dependence or a diagnosis, such as chronic obstructive pulmonary disease, Parkinson's disease, Huntington's disease, amyotrophic lateral sclerosis, or congestive heart failure, that results in a level of impairment so severe that the individual could not be expected to benefit from specialized services.

(76) Significant change in condition--Consistent with §554.801(2)(C)(ii) of this title (relating to Resident Assessment), when a resident experiences a major decline or improvement in the resident's status that:

(A) will not normally resolve itself without further intervention by NF staff or by implementing standard disease-related clinical interventions;

(B) has an impact on more than one area of the resident's health status; and

(C) requires review or revision of the NF comprehensive care plan, or both.

(77) Specialized services--The following support services, other than NF services, that are identified through the PE or resident review and may be provided to a resident who has a PE or resident review that is positive for MI, ID, or DD:

(A) NF specialized services;

(B) IHSS; and

(C) MI specialized services.

(78) SPT--Service planning team. A team convened by a LIDDA staff person that develops, reviews, and revises the HSP and the transition plan for a designated resident. The team must include:

(A) the designated resident;

(B) the designated resident's LAR, if any;

(C) the habilitation coordinator for discussions and service planning related to specialized services or the service coordinator for discussions related to transition planning if the designated resident is transitioning to the community;

(D) the MCO service coordinator, if the designated resident does not object;

(E) the person who develops a permanency plan using the HHSC Permanency Planning Instrument for Children Under 22 Years of Age form and performs other permanency planning activities for a designated resident under 22 years of age, if the designated resident is at least 21 years of age but younger than 22 years of age;

(F) while the designated resident is in a NF:

(i) a NF staff person familiar with the designated resident's needs; and

(ii) an individual providing a specialized service for the designated resident or a representative of a provider agency that is providing specialized services for the designated resident;

(G) if the designated resident is transitioning to the community:



(i) a representative from the community program provider, if one has been selected; and

(ii) a relocation specialist;

(H) a representative from the LMHA or LBHA, if the designated resident's PE is positive for MI;

(I) a concerned person whose inclusion is requested by the designated resident or the LAR; and

(J) at the discretion of the LIDDA, an individual who is directly involved in the delivery of services for people with ID or DD.

(79) Supported employment--An IHSS that:

(A) is assistance provided for a designated resident:

(i) who requires intensive, ongoing support to be self-employed, work from the designated resident's residence, or work in an integrated community setting at which people without disabilities are employed; and

(ii) to sustain competitive employment in an integrated community setting; and

(B) consists of:

(i) making employment adaptations, supervising, and providing training related to the designated resident's assessed needs;

(ii) transporting the designated resident between the NF and the site where the supported employment services are provided and as necessary to support the designated resident to be self-employed, work from the designated resident's residence, or work in an integrated community setting; and

(iii) participating in SPT and IDT meetings.

(80) Surrogate decision maker--An actively involved family member of a resident who has been identified by an IDT in accordance with Texas Health and Safety Code §313.004 and who is available and willing to consent to medical treatment on behalf of the resident.

(81) Terminal illness--A medical prognosis that an individual's life expectancy is six months or less if the illness runs its normal course and that is documented by a physician's certification in the individual's medical record maintained by a NF.

(82) Therapy services--In accordance with §554.2703(46) of this title, assessment and treatment to help a designated resident learn, keep, or improve skills and functioning of daily living affected by a disabling condition. Therapy services are referred to as habilitative therapy services. Therapy services are limited to:

(A) physical therapy;

(B) occupational therapy; and

(C) speech therapy.

(83) Transition plan--A plan developed by the SPT or MI quarterly meeting attendees that describes the activities, timetable, responsibilities, services, and essential supports involved in assisting a designated resident or resident with MI to transition from residing in a NF to living in the community.

(84) Uniform assessment--The HHSC-approved uniform assessment tool for adult mental health services.

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Chief Counsel

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## SUBCHAPTER B. PASRR SCREENING AND EVALUATION PROCESS

### 26 TAC §303.201

#### STATUTORY AUTHORITY

The amendment is 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 §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

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## SUBCHAPTER C. RESPONSIBILITIES

### 26 TAC §303.302, §303.303

#### STATUTORY AUTHORITY

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**SUBCHAPTER E. HABILITATION  
COORDINATION**

**26 TAC §303.502, §303.503**

**STATUTORY AUTHORITY**

The amendments 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 §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

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**SUBCHAPTER F. HABILITATIVE SERVICE  
PLANNING FOR A DESIGNATED RESIDENT**

**26 TAC §303.601, §303.602**

**STATUTORY AUTHORITY**

The amendments 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 §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

§303.601. *Habilitation Coordination for a Designated Resident.*

(a) A LIDDA must assign a habilitation coordinator to each designated resident within two business days after a PE is completed if the PE is positive for ID or DD.

(1) The habilitation coordinator must attend the initial IDT and provide habilitation coordination while the designated resident is residing in the NF.

(2) A designated resident may refuse habilitation coordination.

(b) Unless a designated resident has refused habilitation coordination, the assigned habilitation coordinator must:

(1) assess and reassess quarterly, and as needed, the designated resident's habilitative service needs by gathering information from the designated resident and other appropriate sources, such as the LAR, family members, social workers, and service providers, to determine the designated resident's habilitative needs and preferences and the specialized services that will address those needs and preferences;

(2) develop and revise, as needed, an individualized HSP in accordance with HHSC's rules and IDD PASRR Handbook, and using HHSC forms;

(3) assist the designated resident to access needed specialized services agreed upon in an IDT or SPT meeting, including:

(A) monitoring to determine if a specialized service agreed upon in an IDT or SPT meeting is requested within required timeframes in accordance with the IDD PASRR Handbook or documenting delays and the habilitation coordinator's follow-up activities; and

(B) ensuring the delivery of all specialized services agreed upon in an IDT or SPT meeting or documenting delays and the habilitation coordinator's follow-up activities;

(4) coordinate other habilitative programs and services that can address needs and achieve outcomes identified in the HSP;

(5) facilitate the coordination of the designated resident's HSP and NF comprehensive care plan, including ensuring the HSP is shared with members of the SPT within 10 calendar days after the HSP is updated or renewed;

(6) monitor and provide follow-up activities that consist of:

(A) monitoring the initiation and delivery of all specialized services agreed upon in an IDT or SPT meeting and following up when delays occur;

(B) monitoring the designated resident's and LAR's satisfaction with all specialized services; and

(C) determining the designated resident's progress or lack of progress toward achieving goals and outcomes identified in the HSP from the designated resident's and LAR's perspectives;

(7) meet with the designated resident to provide habilitation coordination:

(A) at least monthly if the designated resident is receiving a specialized service in addition to habilitation coordination; and

(i) meet in person at least quarterly or more frequently as determined by the SPT using the findings of the HHSC Habilitative Assessment form; and

(ii) subject to subsection (d) of this section, meet via audio-visual communication in a month when a meeting is not conducted in person; or

(B) at least quarterly in person, if the designated resident is receiving only habilitation coordination, unless the designated resident or the designated resident's LAR requests more frequent meetings;

(8) convene and facilitate an SPT meeting:

(A) at least quarterly; and

(B) between quarterly SPT meetings if:

(i) there is a change in the designated resident's service needs or medical condition; or

(ii) requested by the designated resident or LAR;

(9) coordinate with the NF in accessing medical, social, educational, and other appropriate services and supports that will help the designated resident achieve a quality of life acceptable to the designated resident and LAR on the resident's behalf;

(10) initially and annually thereafter:

(A) provide the designated resident and LAR an oral and written explanation of the designated resident's rights in accordance with the IDD PASRR Handbook; and

(B) inform the designated resident and LAR both orally and in writing of all the services available and requirements pertaining to the designated resident's participation;

(11) for a designated resident who has a guardian, determine at least annually if the letters of guardianship are current; and

(12) if appropriate, for a designated resident who does not have a guardian, ensure the SPT discusses whether the designated resident would benefit from a less restrictive alternative to guardianship or from guardianship and make appropriate referrals.

(c) Regardless of whether the designated resident is receiving or has refused habilitation coordination, the habilitation coordinator must:

(1) address community living options with the designated resident and LAR by:

(A) offering the educational opportunities and informational activities about community living options that are periodically scheduled by the LIDDA;

(B) providing information about the range of community living services, supports, and alternatives, identifying the services and supports the designated resident will need to live in the community, and identifying and addressing barriers to community living in accordance with HHSC's IDD PASRR Handbook and using HHSC materials at the following times:

(i) six months after the initial presentation of community living options during the PE described in §303.302(a)(2)(B)(i) of this Chapter (relating to LIDDA, LMHA, and LBHA Responsibilities Related to the PASRR Process) and at least every six months thereafter;

(ii) when requested by the designated resident or LAR;

(iii) when the habilitation coordinator is notified or becomes aware that the designated resident, or the LAR on the designated resident's behalf, is interested in speaking with someone about transitioning to the community; and

(iv) when notified by HHSC that the designated resident's response in Section Q of the MDS Assessment indicates the resident is interested in speaking with someone about transitioning to the community; and

(C) arranging visits to community providers and addressing concerns about community living; and

(2) annually assess the designated resident's habilitative service needs by gathering information from the designated resident

and other appropriate sources, such as the LAR, family members, social workers, and service providers, to determine the designated resident's habilitative needs and preferences.

(d) Before the habilitation coordinator conducts the meeting described in subsection (b)(7)(A)(ii) of this section via audio-visual communication, the habilitation coordinator must:

(1) obtain the written informed consent of the designated resident or LAR; or

(2) obtain the designated resident's or LAR's oral consent and document the oral consent in the designated resident's record.

(e) If the habilitation coordinator does not obtain the written or oral consent required by subsection (d) of this section, the habilitation coordinator must document the designated resident's or LAR's refusal in the designated resident's record.

*§303.602. Service Planning Team Responsibilities Related to Specialized Services.*

(a) The SPT for a designated resident must:

(1) meet at least quarterly, as convened by the habilitation coordinator;

(2) ensure that the designated resident, regardless of whether he or she has an LAR, participates in the SPT to the fullest extent possible and receives the support necessary to do so, including communication supports;

(3) develop an HSP for the designated resident;

(4) review and monitor identified risk factors, such as choking, falling, and skin breakdown, and report to the proper authority if they are not addressed;

(5) make timely referrals, service changes, and revisions to the HSP as needed;

(6) considering the designated resident's preferences, monitor to determine if the designated resident is provided opportunities for engaging in integrated activities:

(A) with residents who do not have ID or DD; and

(B) in community settings with people who do not have a disability; and

(7) develop the plan of care for a designated resident who receives IHSS.

(b) Each member of the SPT for a designated resident must:

(1) consistent with the SPT member's role, assist the habilitation coordinator in ensuring the designated resident's needs are being met; and

(2) participate in an SPT meeting in person, via audio-visual communication, or via audio-only communication, except as described in subsection (c)(3) or (e) of this section;

(c) An SPT member who is a provider of a specialized service must:

(1) submit to the habilitation coordinator a copy of all assessments of the designated resident that were completed by the provider or provider agency;

(2) submit a written report describing the designated resident's progress or lack of progress to the habilitation coordinator at least five days before a quarterly SPT meeting; and

(3) participate in an SPT meeting, in person, via audio-visual communication, or via audio-only communication, unless the habilitation coordinator determines participation by the provider is not necessary.

(d) If a habilitation coordinator determines participation by a provider is not necessary as described in subsection (c)(3) of this section, the habilitation coordinator must:

(1) base the determination:

(A) on the information in the written report submitted in accordance with subsection (c)(2) of this section; and

(B) on the needs of the SPT; and

(2) document the reasons for exempting participation.

(e) A habilitation coordinator must facilitate a quarterly SPT meeting in person, or in extenuating circumstances via audio-visual communication.

(f) Before the habilitation coordinator conducts the meeting described in subsection (e) of this section via audio-visual communication, the habilitation coordinator must:

(1) do one of the following:

(A) obtain the written informed consent of the designated resident or LAR; or

(B) obtain the oral consent of the designated resident or LAR and document the oral consent in the designated resident's record; and

(2) document in the designated resident's record a description of the extenuating circumstances which required the use of audio-visual communication.

(g) If the habilitation coordinator does not obtain the written or oral consent required by subsection (f) of this section, the habilitation coordinator must:

(1) document the designated resident's or LAR's refusal in the designated resident's record; and

(2) convene an SPT meeting in person as soon as possible after the extenuating circumstances no longer exist.

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Chief Counsel

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## SUBCHAPTER G. TRANSITION PLANNING

### 26 TAC §303.701, §303.703

#### STATUTORY AUTHORITY

The amendments 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 §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

#### §303.701. *Transition Planning for a Designated Resident.*

(a) A LIDDA must assign a service coordinator for a designated resident if the designated resident, or the LAR on the designated resident's behalf, expresses an interest in moving to the community and has selected a community program.

(b) A service coordinator must facilitate the development, revisions, implementation, and monitoring of a transition plan in accordance with HHSC's IDD PASRR Handbook and using HHSC forms. A transition plan must identify the services and supports a designated resident needs to live in the community, including those essential supports that are critical to the designated resident's health and safety.

(c) The SPT for a designated resident must:

(1) meet as convened by the service coordinator;

(2) ensure that the designated resident, regardless of whether he or she has an LAR, participates in the SPT to the fullest extent possible and receives the support necessary to do so, including communication supports; and

(3) conduct transition planning activities and develop a transition plan for the designated resident.

(d) Consistent with an SPT member's role, each SPT member must:

(1) assist the service coordinator in developing, revising, implementing, and monitoring a designated resident's transition plan to ensure a successful transition to the community for the designated resident; and

(2) participate in an SPT meeting in person, via audio-visual communication, or via audio-only communication, except as described in subsection (e) or (g) of this section.

(e) An SPT member who is a provider of a specialized service must participate in an SPT meeting, in person, via audio-visual communication, or via audio-only communication, unless the service coordinator determines participation by the provider is not necessary.

(f) If a service coordinator determines participation by a provider is not necessary as described in subsection (e) of this section, the service coordinator must:

(1) base the determination on the needs of the SPT; and

(2) document the reasons for exempting participation.

(g) At an SPT meeting convened by a service coordinator, the service coordinator must facilitate the SPT meeting in person, or in extenuating circumstances via audio-visual communication.

(h) For a designated resident who is transitioning to the community, a service coordinator must, in accordance with HHSC's IDD PASRR Handbook and using HHSC forms, conduct and document a pre-move site review of the designated resident's proposed residence in the community to determine whether all essential supports in the designated resident's transition plan are in place before the designated resident's transition to the community.

(i) If the SPT makes a recommendation that a designated resident continue to reside in a NF, the SPT must:

- (1) document the reasons for the recommendation; and
  - (2) include in the designated resident's transition plan:
    - (A) the barriers to moving to a more integrated setting; and
    - (B) the steps the SPT will take to address those barriers.
  - (j) Before the service coordinator conducts the meetings described in subsection (g) of this section via audio-visual communication, the service coordinator must:
    - (1) do one of the following:
      - (A) obtain the written informed consent of the designated resident or LAR; or
      - (B) obtain the oral consent of the designated resident or LAR and document the oral consent in the designated resident's record; and
    - (2) document in the designated resident's record a description of the extenuating circumstances which required the use of audio-visual communication.
    - (k) If the service coordinator does not obtain the written or oral consent required by subsection (j) of this section, the service coordinator must:
      - (1) document the designated resident's or LAR's refusal in the designated resident's record; and
      - (2) convene an SPT meeting in person as soon as possible after the extenuating circumstances no longer exist.
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**SUBCHAPTER I. MI SPECIALIZED SERVICES**  
**26 TAC §303.901**

**STATUTORY AUTHORITY**

The repeal is 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 §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

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**26 TAC §§303.901, 303.905, 303.907, 303.909, 303.910, 303.912, 303.914**

**STATUTORY AUTHORITY**

The amendments 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 §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

*§303.901. Description of MI Specialized Services.*

- (a) An LMHA or LBHA staff must conduct the uniform assessment to determine which level of care the resident with MI will receive.
- (b) Some of the MI specialized services for a resident with MI are described in more detail in this subsection.
  - (1) Skills training and development. Training provided to a resident with MI that:
    - (A) addresses the severe and persistent MI and symptom-related problems that interfere with the functioning of the resident with MI;
    - (B) provides opportunities for the resident with MI to acquire and improve skills needed to function as appropriately and independently as possible in the community; and
    - (C) facilitates community integration for the resident with MI and increases the length of community residency for the resident with MI.
  - (2) Medication training and support services. Education and guidance provided to a resident with MI and family members about the medications of the resident with MI and their possible side effects as described in §306.315 of this title (relating to Medication Training and Support Services).
  - (3) Psychosocial rehabilitation services. Social, educational, vocational, behavioral, and cognitive interventions provided by the therapeutic team members of a resident with MI that address deficits in their ability to develop and maintain social relationships, occupational or educational achievement, independent living skills, or housing. Psychosocial rehabilitative services include the following component services:
    - (A) coordination services;
    - (B) crisis related services;
    - (C) employment related services;
    - (D) housing related services;
    - (E) independent living services; and

(F) medication related services.

(4) Case management. A primarily site-based service to assist a resident with MI or LAR in gaining and coordinating access to necessary care and services appropriate to the needs of the resident with MI.

(5) Psychiatric diagnostic interview examination. An assessment of a resident with MI that includes relevant past and current medical and psychiatric information and a documented diagnosis by a licensed professional practicing within the scope of his or her license.

*§303.905. Process for Service Initiation.*

(a) The LMHA or LBHA must comply with §303.302 of this chapter (relating to LIDDA, LMHA, and LBHA Responsibilities Related to the PASRR Process).

(b) At the initial IDT meeting, an LMHA or LBHA staff must:

(1) review the MI specialized services recommended on the PE;

(2) explain the uniform assessment;

(3) ensure the resident with MI, or LAR on behalf of the resident with MI, understands the purpose of the uniform assessment; and

(4) have the resident with MI, or LAR on behalf of the resident with MI, agree or decline to receive the uniform assessment and MI specialized services.

(c) Within 20 business days after the IDT meeting, if the resident with MI or LAR agrees, the LMHA or LBHA must:

(1) complete the uniform assessment;

(2) develop the PCRPs; and

(3) for a resident with MI only, convene a meeting in person, or in extenuating circumstances via audio-visual communication, to discuss the results of the uniform assessment and PCRPs, and to determine the MI specialized services the resident with MI will receive.

(d) Attendees at the meeting convened in accordance with subsection (c)(3) of this section must include:

(1) the QMHP-CS who is familiar with the needs of the resident with MI;

(2) the resident with MI;

(3) the LAR for the resident with MI, if any; and

(4) a NF staff person familiar with the needs of the resident with MI.

(e) At the meeting convened in accordance with subsection (c)(3) of this section, the QMHP-CS must ensure the resident with MI, regardless of whether he or she has an LAR, participates in the meeting to the fullest extent possible and receives the support necessary to do so, including communication supports.

(f) The LMHA or LBHA must provide a copy of the completed uniform assessment and PCRPs to the NF for inclusion in the NF comprehensive care plan for the resident with MI within 10 calendar days after the meeting convened in accordance with subsection (c)(3) of this section.

(g) Before the LMHA or LBHA conducts the meeting described in subsection (c)(3) of this section via audio-visual communication, the LMHA or LBHA must:

(1) do one of the following:

(A) obtain the written informed consent of the resident with MI or LAR; or

(B) obtain oral consent from the resident with MI or LAR and document the oral consent in the record of the resident with MI; and

(2) document in the record of the resident with MI a description of the extenuating circumstances which required the use of audio-visual communication.

(h) If the LMHA or LBHA does not obtain the written or oral consent required by subsection (g) of this section, the LMHA or LBHA must:

(1) document the resident with MI's or LAR's refusal in the record of the resident with MI; and

(2) convene a meeting in person as soon as possible after the extenuating circumstances no longer exist.

*§303.907. Renewal and Revision of Person-Centered Recovery Plan.*

(a) At least quarterly, the QMHP-CS must convene a MI quarterly meeting with the MI specialized services team, in person, or in extenuating circumstances via audio-visual communication, to:

(1) review the PCRPs to determine whether the MI specialized services previously identified remain relevant; and

(2) determine whether the current uniform assessment accurately reflects the need for MI specialized services in the identified frequency for the resident with MI, in the amount, and duration, or if an updated uniform assessment is required.

(b) The MI specialized services team initiates revisions to the PCRPs in response to changes to the needs of the resident with MI.

(1) Any MI specialized services team member may ask the QMHP-CS to convene a meeting at any time to discuss whether the PCRPs for the resident with MI needs to be revised to add a new MI specialized service or change the frequency, amount, or duration of an existing MI specialized service.

(2) The QMHP-CS must convene a meeting within seven calendar days after learning of the need to revise the PCRPs for the resident with MI.

(c) If the MI specialized services team agrees to add a new MI specialized service to the PCRPs or determines an updated uniform assessment is required, a QMHP-CS must, within seven calendar days after the meeting is held, update the uniform assessment and provide it to the MI specialized services team.

(d) The QMHP-CS must:

(1) document revisions on the PCRPs within five calendar days after a team meeting; and

(2) retain the revised PCRPs documentation in the LMHA or LBHA record for the resident with MI.

(e) Within ten calendar days after the PCRPs is updated or renewed, the QMHP-CS must send each member of the MI specialized services team a copy of the revised PCRPs.

(f) If the MI specialized services team determines a new MI specialized service is needed or determines a change in the frequency, amount, or duration of an existing service is needed, the PCRPs must be revised before the LMHA or LBHA delivers a new or updated service.

(g) Before the QMHP-CS conducts the meeting described in subsection (a) of this section via audio-visual communication, the QMHP-CS must:

(1) do one of the following:

(A) obtain the written informed consent of the resident with MI or LAR; or

(B) obtain the oral consent from the resident with MI or LAR and document the oral consent in the record of the resident with MI; and

(2) document in the record of the resident with MI the extenuating circumstances which required the use of audio-visual communication.

(h) If the QMHP-CS does not obtain the written or oral consent required by subsection (g) of this section, the QMHP-CS must:

(1) document the refusal of the resident with MI or LAR in the record of the resident with MI; and

(2) convene an MI specialized services team meeting in person as soon as possible after the extenuating circumstances no longer exist.

*§303.909. Refusal of the Uniform Assessment or MI Specialized Services.*

(a) When a resident with MI refuses the uniform assessment or MI specialized services, the LMHA or LBHA must:

(1) ask the resident with MI or the LAR to sign the Refusal of PASRR MI Specialized Services form and document on the form if the resident with MI or LAR refuses to sign;

(2) inform the resident with MI that a follow-up visit will be conducted every 30 days for 90 days after the initial IDT meeting;

(3) conduct a follow-up visit every 30 days for 90 days after the initial IDT meeting and make the 90th day follow-up visit the first MI quarterly meeting; and

(4) if the resident with MI or the LAR refuses the uniform assessment or MI specialized services at the first MI quarterly meeting, inform the resident with MI and the LAR that an annual IDT meeting is required and will be conducted, at which time the uniform assessment and MI specialized services will be offered again.

(b) A resident with MI and their LAR, if applicable, may agree to receive the uniform assessment or MI specialized services at any time.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-5018



## SUBCHAPTER J. DISASTER RULE FLEXIBILITIES

### 26 TAC §303.1000

STATUTORY AUTHORITY

The amendment is 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 §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

*§303.1000. Flexibilities to Certain Requirements During Declaration of Disaster.*

(a) HHSC may allow LIDDAs, LMHAs, and LBHAs to use one or more of the exceptions described in subsection (c) of this section while an executive order or proclamation declaring a state of disaster under Texas Government Code §418.014 is in effect. HHSC will notify LIDDAs, LMHAs, and LBHAs when an exception is permitted and the date the exception must no longer be used, which may be before the declaration of a state of disaster expires.

(b) Subject to the notification by HHSC, the following flexibilities may be available to LIDDAs, LMHAs, and LBHAs to the extent the flexibility is permitted by and does not conflict with other laws or obligations of the LIDDAs, LMHAs, and LBHAs and is allowed by federal and state law.

(c) LIDDAs, LMHAs, and LBHAs, for services normally provided in person, may use audio-visual communication or audio-only communication methods to engage with the individual or resident to carry out the requirements in:

(1) §303.302(a)(2)(A)(ii) of this chapter (relating to LIDDA, LMHA, and LBHA Responsibilities Related to the PASRR Process);

(2) §303.601(b)(7) of this chapter (relating to Habilitation Coordination for a Designated Resident);

(3) §303.602(e) of this chapter (relating to Service Planning Team Responsibilities Related to Specialized Services);

(4) §303.701(g) of this chapter (relating to Transition Planning for a Designated Resident);

(5) §303.905(c)(3) of this chapter (relating to Process for Service Initiation); and

(6) §303.907(a) of this chapter (relating to Renewal and Revision of Person-Centered Recovery Plan).

(d) LIDDAs, LMHAs, and LBHAs that use the flexibilities allowed under subsection (c) of this section, must comply with:

(1) all guidance on the application of the rules during the declaration of disaster that is published by HHSC on its website or in another communication format HHSC determines appropriate; and

(2) all policy guidance applicable to the rules identified in subsection (c) of this section issued by HHSC's Medicaid and CHIP Services.

(e) LIDDAs, LMHAs, and LBHAs must ensure any method of contact complies with all applicable requirements related to security and privacy of information.

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

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Karen Ray  
Chief Counsel  
Health and Human Services Commission  
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For further information, please call: (512) 438-5018



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 9. PROPERTY TAX ADMINISTRATION

##### SUBCHAPTER K. ARBITRATION OF APPRAISAL REVIEW BOARD DETERMINATIONS

###### 34 TAC §§9.4251 - 9.4266

The Comptroller of Public Accounts adopts the repeal of §9.4251, concerning definitions; §9.4252, concerning request for arbitration; §9.4253, concerning agent representation in arbitration; §9.4254, concerning appraisal district responsibility for request; §9.4255, concerning comptroller processing of request, online arbitration system, and 45 calendar-day settlement period; §9.4256, concerning comptroller appointment of arbitrators; §9.4257, concerning application for inclusion in comptroller's registry of arbitrators; §9.4258, concerning qualifications for inclusion in the comptroller's registry of arbitrators; §9.4259, concerning arbitrator eligibility for a particular appointment; §9.4260, concerning arbitrator duties; §9.4261, concerning provision of arbitration services; §9.4262, concerning removal of arbitrator from the registry of arbitrators; §9.4263, concerning arbitration determination and award; §9.4264, concerning payment of arbitrator fee, refund of property owner deposit, and correction of appraisal roll; §9.4265, concerning prohibited communications regarding pending arbitration; and §9.4266, concerning forms, without changes to the proposed text as published in the January 5, 2024, issue of the *Texas Register* (49 TexReg 10). The rules will not be republished.

The comptroller repeals all sections included in Subchapter K (Arbitration of Appraisal Review Board Determinations). New sections concerning arbitration of appraisal review board determinations will be adopted in a separate rulemaking to add rules concerning limited binding arbitration and to update the current rules concerning regular binding arbitration and the comptroller's registry of arbitrators.

The comptroller did not receive any comments regarding adoption of the repeal.

The repeals are adopted under Tax Code, §41A.13, which authorizes the comptroller to adopt rules necessary to implement and administer Tax Code, Chapter 41A, concerning appeal through binding arbitration.

The repeals implement Tax Code, Chapter 41A.

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

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Victoria North  
General Counsel for Fiscal and Agency Affairs  
Comptroller of Public Accounts  
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For further information, please call: (512) 475-2220



### DIVISION 1. GENERAL RULES

#### 34 TAC §§9.4201 - 9.4213

The Comptroller of Public Accounts adopts new §9.4201, concerning scope and construction of rules; computation of time; §9.4202, concerning definitions; §9.4203, concerning prohibited communications regarding pending arbitrations; §9.4204, concerning filing requests for binding arbitration and deposit payments; §9.4205, concerning agent representation in binding arbitration; §9.4206, concerning appraisal district responsibility for processing request; §9.4207, concerning comptroller processing of request; §9.4208, concerning withdrawing a request; §9.4209, concerning refund and arbitrator fee processing; §9.4210, concerning forms; §9.4211, concerning communication with property owner, property owner's agent, ARB, appraisal district, and arbitrator; §9.4212, concerning arbitration proceedings; and §9.4213, concerning substitution of arbitrator assigned to arbitration hearing, with changes to the proposed text as published in the January 5, 2024, issue of the *Texas Register* (49 TexReg 11). The rules will be republished.

The new sections will be located in Subchapter K, in new Division 1 (General Rules). The comptroller will repeal all current sections in Subchapter K in a separate rulemaking.

The new sections establish rules concerning limited binding arbitration (LBA) for certain alleged procedural violations during the local protest process under Tax Code, §41A.015, and update current rules concerning regular binding arbitration (RBA) to appeal values determined by local appraisal review boards under Tax Code, §41A.01, and current rules concerning the comptroller's registry of arbitrators.

Section 9.4201 describes the scope and construction of the rules and the computation of time.

Section 9.4202 provides definitions.

Section 9.4203 prohibits parties to an arbitration and arbitrators assigned to an arbitration from seeking the comptroller's advice or direction on a matter relating to a pending arbitration.

Section 9.4204 details the requirements for the filing of requests for binding arbitration and deposit payments using electronic filing or paper-based filing, and the requirements for refund recipients.

Section 9.4205 addresses the qualifications, certifications, responsibilities, and appointment of an agent authorized to represent a party in a binding arbitration. This section also addresses the duration and verification of an agent's appointment.

Section 9.4206 sets forth the appraisal district's responsibility for processing requests for binding arbitration.

Section 9.4207 addresses the comptroller's responsibility for processing requests for binding arbitration.



Section 9.4208 describes the requirements for withdrawing a request for binding arbitration.

Section 9.4209 explains the process for deposit refunds and the payment of administrative fees and arbitrator fees.

Section 9.4210 lists the forms that are adopted by reference and provides that the comptroller may revise other forms at the comptroller's discretion and may prescribe additional forms for the administration of binding arbitration.

Section 9.4211 sets forth the methods by which the property owner, property owner's agent, appraisal review board, appraisal district, and arbitrator may communicate with one another.

Section 9.4212 addresses the process and requirements for conducting arbitration proceedings.

Section 9.4213 discusses the process of removing an arbitrator assigned to an arbitration hearing and substituting another arbitrator to replace the initial arbitrator.

The comptroller received comments regarding adoption of the amendments from Chase Koska, Selina Boggs, Dr. Loretta L. Higgins, Harris Central Appraisal District (HCAD), Travis Central Appraisal District (Travis CAD), Fort Bend Central Appraisal District (FBCAD), Texas Association of Appraisal Districts (TAAD), and Williamson Central Appraisal District (WCAD).

Mr. Koska comments that the RBA award form, adopted by reference in §9.4210(a)(2), "looks good in style but lacks indication of who (CAD {county appraisal district} or property owner/agent) is closer to the Arbitrator Awarded Value, or a Dollar Difference field as the previous award form had, and therefore doesn't show who the winner is (so to speak)." The comptroller thanks Mr. Koska for submitting this comment and, in response, modifies the RBA award form to indicate whether the award was determined in favor of the property owner or appraisal district.

Ms. Boggs asks whether individuals and companies may submit personal checks under item (2) of the request for RBA form, adopted by reference in §9.4210(a)(1), which refers to a check or money order. In response to this comment, the comptroller states that, prior to the online arbitration system becoming available, deposits for binding arbitration may be made by issuing a personal check. After the online system becomes available, only property owners filing using the paper-based system described in §9.4204(b) may pay using personal checks. However, if the personal check is not honored, the deposit must be paid with a check issued and guaranteed by a banking institution (i.e., a cashier's or teller's check) or money order under §9.4207(c). No change to the rules is necessary.

Ms. Boggs asks how, if agents must file online, an agent pays when a property owner is required to submit a check or money order payable to the comptroller. In response to this comment, the comptroller notes that an individual who is required to file using the online arbitration system must submit payments through the online arbitration system under Tax Code, §41A.03(c). An individual who is required to file using the online arbitration system may not submit personal checks. No changes to the rules are necessary.

Ms. Boggs asks whether the property owner or agent is supposed to submit the request for binding arbitration form and whether it must be submitted online or using a paper form. In response to this comment, the comptroller states that either the property owner or the agent may submit a request for binding arbitration; however, once the online arbitration system

becomes available, the request must be filed using the online arbitration system if the property owner has an agent. Only one request per property may be submitted. No changes to the rules are necessary.

The comptroller thanks Ms. Boggs for submitting these comments.

Dr. Higgins believes that §9.4202(12) concerning the definition of "limited binding arbitration" is "confusing in nature as it implies that the property owner or agent may choose a specific arbitrator to conduct LBA procedures." To accomplish the comptroller's intent, Dr. Higgins suggests that the rule be revised "to state that the comptroller will choose an arbitrator on behalf of the property owner (agent) from qualified arbitrators and that arbitrator shall compel the ARB {appraisal review board} or chief appraiser to take certain actions." In response to this comment, the comptroller revises the language of §9.4202(12) to clarify this definition.

Dr. Higgins asks whether the comptroller has "an estimation on when the online arbitration system," defined in §9.4202(15), "will become available for arbitrators." In response to this comment, the comptroller states that the online arbitration system is currently being developed and that the comptroller's Property Tax Assistance Division (PTAD) will announce when the online arbitration system is available. No changes to the rules are necessary.

Dr. Higgins asks whether arbitrators will be able to see the appointment of agents form, described in §9.4205, online when the online arbitration system becomes available. No changes to the rules are necessary in response to this comment because arbitrators will not be able to see the appointment of agents form online when the online arbitration system becomes available.

The comptroller thanks Dr. Higgins for submitting these comments.

HCAD recommends that, in §9.4212(h)(4), the due date for exchanging hearing evidence be set at 10 days before the hearing date and the due date for exchanging rebuttal evidence be set at three days before the hearing date to "add consistency to the process." The comptroller declines to make changes to the rules in response to this comment because Tax Code, Chapter 41A.08, allows arbitrators to give notice of and conduct hearings as long as they are consistent with Civil Practice and Remedies Code, Chapter 171, Subchapter C, and does not provide a specific time frame in which evidence exchanges must take place.

HCAD recommends that, under §9.4212(h)(4), all evidence be exchanged electronically "unless the property owner requests a paper copy" because "electronic means is more efficient, reduces costs and is in line with the spirit of recent legislation pushing our processes away from paper." The comptroller declines to make changes to the rules in response to this comment because not all property owners have access to email. However, the comptroller revises §9.4212(h)(7) to expand the list of possible options to include the electronic exchange of evidence.

The comptroller thanks HCAD for submitting these comments.

Travis CAD requests "that the time frame for CAD response be extended" in §9.4206 because, based on "the increased arbitration volume, a longer response time would assist CADs in providing the necessary information." The comptroller declines to make changes to the rules in response to this comment because Tax Code, §41A.05(a) requires appraisal districts to respond within 10 days.

Travis CAD requests that the online arbitration system, defined in §9.4202(15), "allow for mass download of information so that the CAD can avoid data entry into our CAMA system," which "would cut down on processing time for the CAD." The comptroller declines to make changes to the rules in response to this comment because downloadable reports will eventually be available on the online arbitration system.

The comptroller thanks Travis CAD for submitting these comments.

FBCAD recommends amending §9.4202(6) to define an ARB order "as a written determination issued under Tax Code §41.47" because a "written decision by an ARB can include more than just an Order." In response to this comment, the comptroller revises §9.4202(6) to define an ARB order as an "ARB's written decision issued under Tax Code, §41.47."

FBCAD recommends narrowing the definition of "limited binding arbitration" in §9.4202(12) "by specifying that an LBA is to compel certain procedural actions pursuant to Tax Code, §41A.015." In response to this comment, the comptroller revises §9.4202(12) by adding the word "procedural."

FBCAD recommends providing a definition of "settlement period" in §9.4202 "as described in §9.4242(a)." The comptroller declines to make changes to the definition of "settlement period"; however, the comptroller rewords each mention of "settlement period" to "45-day settlement period" in §9.4242(b) and §9.4243(a), which will be submitted in a separate rulemaking.

FBCAD recommends not allowing an exception to the prohibition on communications regarding pending arbitrations under §9.4203(c) because by allowing an exception to the prohibition on communications for the curing of defects in submitted requests for binding arbitration, the comptroller risks providing substantive legal advice to only one party in an adversarial proceeding by advising property owners on perfecting their appeals through binding arbitration. FBCAD states that other than providing notice of a defect, "the comptroller should not communicate regarding the curing of a defect in a request for binding arbitration." The comptroller declines to make changes to the rules in response to this comment because the exception is necessary for PTAD to communicate with property owners in order to accept deposits. This exception gives effect to the legislative directive that property owners be given an opportunity to cure. All jurisdictional issues will be determined by the arbitrator. PTAD will not provide substantive legal advice.

FBCAD recommends requiring the appointment of agent for binding arbitration under §9.4205(b) "to be filed with the comptroller contemporaneous with the filing of the RBA." The comptroller declines to make changes to the rules in response to this comment because the online arbitration system will not be able to collect the appointment of agent for binding arbitration forms.

FBCAD recommends making the appointment of agent for arbitration "available for viewing by the appraisal district" on the online arbitration system or "providing it to the appraisal district with the notice of filing of an RBA" under §9.4206(a)(2). If it is not provided to the appraisal district, "appraisal districts will have to request a copy to verify the authority of an agent during the appraisal district's 10-day processing period under Tax Code §41A.05(a)" and §9.4206(a)(2). This would cause "unnecessary delays on appraisal districts' processing requirements." The comptroller declines to make changes to the rules in response to this comment because the online arbitration system

will not be able to collect the appointment of agent for binding arbitration forms. The appraisal district will not be required to determine whether the agent has authority to represent the property owner; the question of whether proper authority exists will fall to the arbitrator.

FBCAD recommends clarifying that the 10-day period in §9.4206(a)(2) "begins with the receipt by the appraisal district of notice from the comptroller that a request for binding arbitration has been filed," as opposed to "10 days from the comptroller's receipt of the request for binding arbitration." In response to this comment, the comptroller revises §9.4206(a)(2) to clarify that the 10-day period in that section begins with the receipt by the appraisal district of notice from the comptroller that a request for binding arbitration has been filed.

FBCAD recommends changing the language in §9.4206(a)(2)(C) "to include more than one representative for an appraisal district in a hearing." FBCAD points out that Tax Code §41A.08(b) "does not require a single, statutorily authorized person to be designated per arbitration hearing." The comptroller declines to make changes to the rules in response to this comment because nothing in the rules prevents more than one appraisal district employee from attending a hearing. The online arbitration system will allow multiple appraisal district representatives to have access to cases in the online arbitration system.

FBCAD recommends that if the comptroller requires a contact person at the appraisal district, they require that one be designated. In response to this comment, the comptroller changes "representative" to "contact" in §9.4206(a)(2)(C) and (D). The appraisal district will be required to designate a contact, but not the representative for the arbitration hearing, in the online arbitration system. The appraisal district will be required to designate the appraisal district's representative for the arbitration hearing to the arbitrator.

FBCAD recommends requiring the appraisal district "to provide only contact information for the chair of the ARB or legal counsel to the ARB pursuant to Tax Code, §6.43" under §9.4206(a)(2)(D). For purposes of an LBA, "the appraisal district should not be responsible for determining and providing contact information for the ARB." Under Tax Code, §41A.015(h), the ARB and the chief appraiser are separate parties to an LBA. In response to this comment and the previous comment, the comptroller revises §9.4206(a)(2)(D) to require an appraisal district to only enter information for an ARB contact.

FBCAD recommends the comptroller "remove the 15-day period to cure an insufficient or dishonored payment" under §9.4207(c) and "require property owners provide the statutory deposit not later than the 60th day after notice of issuance of an ARB order is received by the property owner." The comptroller declines to make changes to the rules in response to this comment because PTAD interprets Tax Code, §41A.05(d) to allow a cure for a deposit defect.

FBCAD recommends removing "payment" as an element that may be cured in §9.4207(e). FBCAD states that although Tax Code §41A.05(d) provides that an applicant may cure a defect without regard to the deadline for filing under Tax Code §41A.03(a), the defect that may be cured under Tax Code, §41A.05(d) is a defect in the application, not an insufficient deposit. FBCAD also states that there must first be jurisdiction before a defect can be determined or cured and no jurisdiction has been established if a deposit is insufficient. The comptroller

declines to make changes to the rules in response to this comment because PTAD interprets Tax Code, §41A.05(d) to allow a cure for a deposit defect.

FBCAD recommends "deleting the phrase 'open to the public or to the arbitrator' in §9.4212(e) and substituting language that would require an office-like setting designed or intended for professional meetings and conducive to hearings." FBCAD is concerned that "a location generally open to the public or arbitrator could be interpreted to include coffee shops and restaurants among other places open to the public." The comptroller declines to make changes to the rules in response to this comment because the current rule already requires a hearing be conducted "in an office-like setting."

FBCAD recommends "deleting the phrase, 'by telephone' in §9.4212(f) and requiring the contact be in writing." The comptroller declines to make changes to the rules in response to this comment because not all property owners have access to email.

FBCAD recommends "the confidentiality provisions of Government Code, §552.149 be included as applicable to the arbitrator" in §9.4212(n). In response to this comment, the comptroller changes the rule to reference all applicable confidentiality laws and makes a conforming change for consistency with §9.4213(f) and §9.4265(g).

FBCAD requests that the processing time in §9.4212(p) "be reduced from 120 days to 90 days" because the 120-day time period "will push arbitration hearings into the next tax year's noticing of appraised value and protests." The comptroller declines to make changes to the rules in response to this comment because most arbitrators complete hearings and issue determinations within the 120-day time period and delays are often due to requests for postponement.

FBCAD requests that, if a substitute arbitrator is appointed after an arbitration hearing but prior to the award under §9.4213(b), "a new hearing be required unless the parties agree otherwise." In response to this comment, the comptroller revises §9.4213(b) to require the substitute arbitrator appointed under this subsection to comply with Subchapter K in facilitating and completing a new hearing.

FBCAD recommends "the confidentiality provisions of Government Code §552.149 be included as applicable to the information" provided in §9.4213(f). The comptroller changes the rule to reference all applicable confidentiality laws.

The comptroller thanks FBCAD for submitting these comments.

TAAD requests notice be "provided to appraisal districts when a request for Limited Binding Arbitration is filed with the Comptroller." The comptroller declines to make changes to the rules in response to this comment because the online arbitration system will notify appraisal districts when a request for LBA is filed.

TAAD requests that language be added in the rules, deeming an agreement reached by the parties after a request for LBA has been filed but before a hearing has been held, a withdrawal of the request for LBA. The comptroller declines to make changes to the rules in response to this comment because §9.4208 already addresses how to make a timely request to withdraw.

TAAD requests "a provision be added in the rules for a refund of fees upon the deemed withdrawal" of the request for LBA. The comptroller declines to make changes to the rules in response to this comment because §9.4208 already addresses how to re-

ceive a refund of the deposit upon the timely withdrawal of the request for LBA.

TAAD asks that a provision be added to the rules requiring the appointment of agent for binding arbitration form to be filed with the comptroller and made available on the online arbitration system. The comptroller declines to make changes to the rules in response to this comment because the online arbitration system will not be able to collect the appointment of agent for binding arbitration forms.

TAAD asks whether §9.4206(a)(2)(C) seeks a contact person at the appraisal district or requires the assignment of the appraisal district representatives for the arbitration hearing. In response to this comment, the comptroller changes "representative" to "contact" in §9.4206(a)(2)(C).

TAAD asks whether §9.4206(a)(2)(D) seeks a contact person at the ARB or the ARB's representatives for the LBA hearing. In response to this comment, the comptroller changes "representative" to "contact" in §9.4206(a)(2)(D).

TAAD asks for a timeframe to be added to the rules relating to the comptroller's review of information submitted to cure a defect. The comptroller declines to make changes to the rules in response to this comment because there is not a statutory deadline for this process and PTAD is unable to predict how many requests will need to be cured.

The comptroller thanks TAAD for submitting these comments.

WCAD recommends clarifying or removing the words "or the first day the comptroller makes the online arbitration system available" from §9.4206 because it is confusing since it appears to apply to a time period prior to January 1, 2024, which has already passed. The comptroller declines to make changes to the rules in response to this comment because the online arbitration system is not yet available.

WCAD comments that §9.4212(h)(7) "makes it very difficult for both parties to exchange evidence when an arbitrator insists on very short deadlines" and does "not allow email for evidence exchange," which can make the exchange of evidence very expensive. The comptroller declines to change the rules to require set deadlines or require email evidence exchange because Tax Code, Chapter 41A.08, allows arbitrators to conduct hearings as long as they are consistent with Civil Practice and Remedies Code, Chapter 171, Subchapter C, and does not provide a specific time frame in which evidence exchanges must take place. Additionally, not all property owners have access to email. However, the comptroller revises §9.4212(h)(7) to expand the list of possible options to include the electronic exchange of evidence.

Regarding the Request for RBA Form, adopted by reference in §9.4210(a)(2), WCAD recommends removing the border between the two sections of the form if the mailing address is for the contact person; otherwise, owner or organization information may be filled in. The comptroller declines to make changes to the form because the mailing address is for the request and not for the contact person.

The comptroller thanks WCAD for submitting these comments.

The new sections are adopted under Tax Code, §41A.13, which authorizes the comptroller to adopt rules necessary to implement and administer Tax Code, Chapter 41A, concerning appeal through binding arbitration.

The new sections implement Tax Code, Chapter 41A.

§9.4201. *Scope and Construction of Rules; Computation of Time.*

(a) Scope of rules. The rules in this subchapter shall govern:

(1) the procedures concerning regular binding arbitration to appeal values determined by local appraisal review boards under Tax Code, §41A.01;

(2) the procedures concerning limited binding arbitration for certain alleged procedural violations during the local protest process under Tax Code, §41A.015; and

(3) the comptroller's registry of arbitrators.

(b) Construction of rules. Unless otherwise provided, this subchapter shall be construed in accordance with the Code Construction Act, Government Code, Chapter 311.

(c) Computation of time. Computation of time shall be consistent with the Code Construction Act, Government Code, §311.014, and Tax Code, §1.06.

§9.4202. *Definitions.*

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

(1) Agent--An individual, authorized under Tax Code, §41A.08(b) or §41A.015(h), and §9.4205 of this title, as applicable, to represent a party in arbitration.

(2) Appraisal district--A political subdivision established in each county responsible for appraising property in the county for ad valorem tax purposes for each taxing unit that imposes such taxes on property in the county.

(3) Appraisal review board (ARB)--The board established in a county's appraisal district pursuant to Tax Code, §6.41, authorized to hear and resolve disputes between property owners and the appraisal district.

(4) Appraised value--The value of property determined under the appraisal methods and requirements of Tax Code, Chapter 23.

(5) Arbitration--A form of conflict resolution in which all parties agree that an arbitrator will consider the evidence and render a binding decision. This term includes the two types of arbitration governed by this subchapter: regular binding arbitration and limited binding arbitration. The terms "arbitration," "binding arbitration," and "arbitration proceeding" are synonymous as used in this subchapter and include the term "arbitration hearing," the specific event at which evidence is presented to an arbitrator.

(6) ARB order--An ARB's written decision issued under Tax Code, §41.47.

(7) Authorized individual--An individual with the legal authority to act on behalf of the property owner, a legal guardian, or one who holds a valid power of attorney. Where the property owner is a business entity, this term includes the designated employee of that entity. This term does not include an individual appointed as an agent for binding arbitration under §9.4205 of this title or under Tax Code, §1.111.

(8) Chief Appraiser--The chief administrator of the appraisal district.

(9) Comptroller--The Texas Comptroller of Public Accounts and employees and designees of the comptroller.

(10) Division director--The director of the Property Tax Assistance Division of the Texas Comptroller of Public Accounts or the division director's designee.

(11) Individual--A single human being.

(12) Limited Binding Arbitration (LBA)--A process that allows a property owner through binding arbitration to request that an arbitrator compel the ARB or the chief appraiser to take certain procedural actions under Tax Code, §41A.015.

(13) LBA award--A final decision rendered by an arbitrator resolving the matter submitted for their consideration in an LBA case.

(14) Market value--Has the meaning assigned by Tax Code, §1.04(7).

(15) Online arbitration system--A web-based software application designed to electronically administer the binding arbitration program consistent with this subchapter.

(16) Party--The property owner, property owner's agent, ARB, or appraisal district.

(17) Property owner--The authorized individual or a person having legal title to property. The term does not include lessees who have the right to protest property valuations before ARBs.

(18) Regular Binding Arbitration (RBA)--A process under Tax Code, §41A.01, that allows a property owner to contest an ARB order determining a protest through binding arbitration.

(19) RBA award--A final decision rendered by an arbitrator resolving the matter submitted for their consideration in an RBA case.

§9.4203. *Prohibited Communications Regarding Pending Arbitrations.*

(a) Prohibited communications. Parties to an arbitration and arbitrators assigned to an arbitration shall not seek the comptroller's advice or direction on a matter relating to a pending arbitration under Tax Code, Chapter 41A.

(b) Pending arbitration. An arbitration is pending from the date a request for binding arbitration is filed until the date of delivery of the LBA or RBA award pursuant to Tax Code, §41A.09.

(c) Exception. The prohibition in subsection (a) of this section shall not apply to the comptroller's processing and curing of requests for binding arbitration and deposits or other administrative matters.

§9.4204. *Filing Requests for Binding Arbitration and Deposit Payments.*

(a) Electronic filing.

(1) This subsection applies to requests for binding arbitration filed on or after the later of January 1, 2024, or the first day the comptroller makes the online arbitration system available for the administration of the binding arbitration program. Requests for binding arbitration filed before the later of January 1, 2024, or the first day the comptroller makes the online arbitration system available, must use paper-based filing under subsection (b) of this section.

(2) Arbitrators, appraisal districts, ARBs, agents, and property owners who are working with an agent are required to register with the online arbitration system and use the online arbitration system to complete required forms referenced in this subchapter, pay required arbitration deposits online, and receive notifications by email under this subchapter.

(3) A property owner who does not appoint an agent may:

(A) register with the online arbitration system and use the online arbitration system to complete required forms referenced in this subchapter, pay required arbitration deposits online, and receive notifications by email under this subchapter; or

(B) use the paper-based filing method described in subsection (b) of this section.

(4) Use of an email address or other information to access the online arbitration system is a voluntary disclosure constituting consent to the collection and disclosure of the information for the purposes for which it was requested. This information may be subject to disclosure under the Texas Public Information Act.

(b) Paper-based filing. The following parties must mail the applicable request form pursuant to the instructions provided on the form and include a check or money order for the required arbitration deposit payable to the comptroller:

(1) a property owner or property owner's agent, if the request for binding arbitration is filed before the later of January 1, 2024, or the first day the comptroller makes the online arbitration system available; and

(2) a property owner who does not appoint an agent and who chooses not to use the online arbitration system.

(c) Deposit payments. A request for binding arbitration is not officially submitted until the required deposit is paid. If the request is filed using electronic filing under subsection (a) of this section, the deposit must be paid through the online arbitration system. If the request is filed using paper-based filing under subsection (b) of this section, the deposit must be paid by including a check or money order with the request for binding arbitration form.

(d) Requirements for refund recipient.

(1) Except as provided in paragraphs (2) and (3) of this subsection, the property owner shall designate the refund recipient on the request for binding arbitration.

(2) If the property owner appoints an agent under §9.4205 of this title, the agent may designate the refund recipient on the request for binding arbitration by designating the refund recipient that the property owner designated in the appointment of agent for binding arbitration form.

(3) The refund recipient's name, mailing address, phone number, and one of the following Internal Revenue Service identification numbers for the refund recipient, must be provided on the request for binding arbitration:

(A) Social Security Number (SSN);

(B) Individual Taxpayer Identification Number (ITIN) issued by the Internal Revenue Service to individuals not eligible to obtain an SSN; or

(C) Federal Employer Identification Number (FEIN).

(4) To protect the confidentiality of the refund recipient's identification number, the comptroller shall assign a Texas Identification Number (TIN) to serve as the payee account number on any warrants issued by the comptroller.

*§9.4205. Agent Representation in Binding Arbitration.*

(a) Professional qualifications. Property owners may represent themselves or choose to be represented by an agent. An agent must hold a current and active license, certification, or registration in one of the following fields:

(1) an attorney licensed to practice in Texas;

(2) a real estate broker or sales agent licensed under Occupations Code, Chapter 1101;

(3) a real estate appraiser licensed under Occupations Code, Chapter 1103;

(4) a property tax consultant registered under Occupations Code, Chapter 1152; or

(5) a certified public accountant licensed under Occupations Code, Chapter 901.

(b) Required documentation.

(1) The property owner must complete and sign the appointment of agent for binding arbitration form. No other agent appointment, authorization form, or document will be accepted.

(2) Neither the individual being appointed as an agent under this subsection, nor an agent appointed under Tax Code, §1.111, may sign the form described in paragraph (1) of this subsection on behalf of the property owner.

(3) For requests for binding arbitration filed with the comptroller on or after January 1, 2024, the agent shall retain the form and shall produce the form immediately upon request from the property owner, appraisal district, ARB, arbitrator assigned to the arbitration, or comptroller under Tax Code, §41A.08(d).

(4) Failure of the agent to produce the form immediately upon request as required by Tax Code, §41A.08(d), or production of an invalid form, shall result in dismissal of the request for binding arbitration and may result in loss of the arbitration deposit.

(c) Agent responsibilities. Authorized agents may take the following actions in an arbitration on a property owner's behalf:

(1) file online requests for binding arbitration and pay the required arbitration deposit through the online arbitration system;

(2) receive a potential refund of an arbitration deposit, if the agent is designated as a refund recipient under §9.4204(d) of this title;

(3) send and receive communications regarding the arbitration;

(4) negotiate with the appraisal district to try to settle the case before the arbitration hearing;

(5) execute a settlement agreement with the appraisal district to resolve the case;

(6) withdraw a request for binding arbitration; and

(7) appear and represent the property owner at the arbitration hearing.

(d) Designation of specific individual.

(1) The property owner must identify on the appointment of agent for binding arbitration form a specific individual to act as an agent and provide the agent's license number for the specific type of license, certification, or registration that qualifies the individual to act as an agent under subsection (a) of this section.

(2) The property owner may also appoint an alternate agent on the appointment of agent for binding arbitration form. Unless the alternate agent is with the same organization as the first agent, the alternate agent shall not be authorized to act on a property owner's behalf unless the alternate agent provides written notice to the appraisal district and the appointed arbitrator that the first agent is not available. For LBA, a copy of the notice must also be provided to the ARB.

(3) A company or business entity does not qualify to act as an agent.

(e) Agent representation at arbitration hearing. Only the individual(s) identified on the appointment of agent for binding arbitration form may undertake representation of the property owner in the arbitration hearing.

tration for which the request for binding arbitration was submitted. No other individual, including a licensed attorney, may act on the property owner's behalf in that proceeding unless another subsequently executed appointment of agent for binding arbitration form is completed and signed.

(f) Agents for non-individual property owners. The property owner's name, current mailing address, phone number, and email address, if available, must be provided on the appointment of agent for binding arbitration form. If the property owner is not an individual, an authorized individual shall complete and sign the form on behalf of the property owner. The authorized individual's name and contact information must be provided on the form, as well as the basis for the authorized individual's authority.

(g) Duration of agent appointment. The appointment of agent for binding arbitration form is valid for three years from the date of execution, unless revoked. The property owner may revoke the appointment of an agent or alternate agent at any time by delivery of written notice to the agent, and all alternate agents, if any are appointed, to the address provided on the form or the agent's last known address. A copy of the revocation notice must also be provided to the comptroller, appraisal district, and the arbitrator assigned to the case, if an arbitrator is assigned. For LBA, a copy of the revocation notice must also be provided to the ARB.

(h) Agent certifications. In undertaking representation of the property owner pursuant to Tax Code, §41A.08(b), each agent must certify that:

(1) they are acting as a fiduciary on behalf of the property owner in the specific arbitration proceeding for which the request for binding arbitration was filed and agree to undertake the responsibilities specified in subsection (c) of this section; and

(2) the property owner knowingly authorized the agent's filing of the request for binding arbitration and the agent's representation of the property owner in the arbitration.

*§9.4206. Appraisal District Responsibility for Processing Request.*

(a) Appraisal district responsibilities.

(1) If a request for RBA is filed before the later of January 1, 2024, or the first day the comptroller makes the online arbitration system available, within 10 calendar days of receipt of each request for binding arbitration under Tax Code, §41A, the appraisal district shall:

(A) assign a unique arbitration number to each request for RBA;

(B) complete and sign that portion of the request for RBA form applicable to the appraisal district, based on examination of the documentation submitted;

(C) deliver each request for RBA form, the accompanying deposit, the ARB order (as well as the appointment of agent for binding arbitration form, if provided), and supporting documentation for any items not checked in the appraisal district portion of the request for RBA form, if applicable, to the comptroller's office by certified first-class mail, and simultaneously deliver a copy of the submission to the property owner or property owner's agent, as appropriate, by regular first-class mail or email; and

(D) provide promptly any additional information the comptroller's office requests to process the request for binding arbitration submission.

(2) If a request for RBA or LBA is filed on or after the later of January 1, 2024, or the first day the comptroller makes the online system available, within 10 calendar days of notification by the

comptroller of each request for binding arbitration under Tax Code, §41A, the appraisal district shall, using the online arbitration system:

(A) review each request for binding arbitration;

(B) verify property account details;

(C) assign an appraisal district contact for the arbitration hearing;

(D) enter the contact information for an ARB contact for LBA cases;

(E) indicate any potential defects, including any discrepancies or jurisdictional issues, that affect the deposit amount or the eligibility of a property to be included on the request for binding arbitration; and

(F) upload supporting documentation for any potential defects, including any discrepancies or jurisdictional issues, identified in the review process.

(b) Comptroller's request for additional information. The appraisal district shall provide to the comptroller any additional information the comptroller requests to process the request for binding arbitration within 15 calendar days of the comptroller's request.

(c) Notification if new ARB hearing is mandated. Where an LBA award mandates a new ARB hearing associated with a pending request for RBA, the appraisal district shall promptly notify the comptroller.

*§9.4207. Comptroller Processing of Request.*

(a) No defects identified. If no defects are identified by the comptroller or by the appraisal district under §9.4206(a)(2)(E) of this title, the comptroller shall notify the appraisal district and the property owner or the property owner's agent that the request for binding arbitration has been processed and provide the arbitration number assigned by the comptroller. For LBA, a copy of the notice must also be provided to the ARB.

(b) Defects identified. If the appraisal district or the comptroller identifies defects on the request for binding arbitration that affect the deposit or property eligibility, the comptroller shall review the request to determine whether it can be processed or requires a cure under subsection (d) of this section.

(c) Deposit not honored or insufficient. If a property owner using paper-based filing under §9.4204(b) of this title pays the deposit with a check that is not honored, the property owner shall submit to the comptroller a check issued and guaranteed by a banking institution (i.e., a cashier's or teller's check) or money order. If a property owner using paper-based filing under §9.4204(b) of this title pays the deposit with a check or money order that is for less than the required deposit amount under §9.4221 or §9.4241 of this title, the property owner shall submit to the comptroller a supplemental check or money order sufficient to pay the full deposit. If a property owner or the property owner's agent using the online arbitration system pays the deposit with a credit card or electronic funds transfer (eCheck) that is not honored, the property owner or the property owner's agent shall submit another electronic payment to the comptroller. Such payments must be received no later than 15 calendar days after the notice of the defect is delivered under subsection (d) of this section.

(d) Cure period. If a request for binding arbitration is defective, the comptroller shall notify the property owner or the property owner's agent of the defect, the process to file a cure for the defect, and the date the cure is due. Mailed notices are deemed delivered when deposited in the mail. If notified by email or on the online arbitration

system, the notification is deemed delivered on the date the comptroller transmits the email or notice.

(e) Cure resolution. If the property owner or the property owner's agent provides documentation, payment, or information that cures the defect within 15 calendar days of the comptroller's notice, the comptroller shall process the request for binding arbitration and notify the appraisal district and property owner or the property owner's agent. For LBA, a copy of the notice must also be provided to the ARB.

(f) Failure to cure. If the property owner or the property owner's agent fails to cure any defect that the comptroller determines to be curable within 15 calendar days of the comptroller's notice, the request for binding arbitration shall not be processed any further and shall be closed, the comptroller shall notify the parties of the comptroller's action, and the comptroller shall refund the deposit pursuant to §9.4209 of this title.

(g) Processing is not certification of requirements. The comptroller's processing of a request does not certify that the request meets all statutory requirements and requests may still be dismissed by an arbitrator for lack of jurisdiction.

(h) Dispute. If there is a dispute regarding whether there is jurisdiction for an arbitration under §9.4223 or §9.4244 of this title, the request for binding arbitration shall be forwarded to the arbitrator and the arbitrator shall render a determination on jurisdiction. Arbitrators shall determine whether a request meets all statutory criteria and shall dismiss the request if it satisfies the criteria for dismissal under §9.4223 or §9.4244 of this title. Dismissal of the request may result in the loss of the requestor's deposit.

*§9.4208. Withdrawing a Request.*

(a) Notice of withdrawal. A property owner or the property owner's agent using the online arbitration system under §9.4204(a) of this title must withdraw a request for binding arbitration using the online arbitration system. A property owner or the property owner's agent using paper-based filing under §9.4204(b) of this title must deliver a written notice of the withdrawal to all parties and the comptroller.

(b) Timely withdrawal. If the comptroller receives the notice of withdrawal before an arbitrator accepts the case, the notice is considered timely, and the deposit will be refunded pursuant to §9.4209 of this title.

(c) Untimely withdrawal. If the comptroller receives the notice of withdrawal after an arbitrator accepts the case, the notice is considered untimely and the arbitrator is entitled to charge a fee, up to the amount allowed in §9.4226 or §9.4247 of this title, as applicable, out of the deposit.

*§9.4209. Refund and Arbitrator Fee Processing.*

(a) Administrative costs. The comptroller shall retain \$50 of every arbitration deposit to cover the comptroller's administrative costs.

(b) Refund recipients. Any deposit refunds will be issued to the refund recipient designated on the request for binding arbitration.

(c) Refund amounts.

(1) A deposit refund shall be issued to the property owner or property owner's agent in the amount of the deposit less the \$50 comptroller administrative fee if:

(A) the request for binding arbitration is closed due to a defect that could not be cured or due to a defect that was not cured;

(B) the request for binding arbitration is timely withdrawn;

(C) the arbitration is dismissed in its entirety due to delinquent property taxes;

(D) the LBA award found a procedural violation in accordance with §9.4226 of this title; or

(E) the RBA award is in favor of the property owner in accordance with §9.4247(b) of this title.

(2) A deposit refund, if any, shall be issued in the amount of the deposit less the arbitrator's fee and the \$50 comptroller administrative fee if:

(A) the request for binding arbitration is not timely withdrawn;

(B) the arbitration is dismissed in its entirety for lack of jurisdiction under §9.4223(a)(2)-(9) or §9.4244(a)(2)-(8) of this title;

(C) the LBA award did not find a procedural violation in accordance with §9.4226 of this title; or

(D) the RBA award is not in favor of the property owner in accordance with §9.4247(b) of this title.

*§9.4210. Forms.*

(a) Adoption by reference. The comptroller adopts by reference:

(1) the request for RBA form; and

(2) the RBA award form.

(b) Revision and addition of forms. Except as provided by subsection (a) of this section, all comptroller forms regarding binding arbitration under Tax Code, Chapter 41A, may be revised at the discretion of the comptroller. The comptroller may also prescribe additional forms for the administration of binding arbitration.

*§9.4211. Communication with Property Owner, Property Owner's Agent, ARB, Appraisal District, and Arbitrator.*

Except as otherwise provided in Tax Code, §41A.015(b)(1) or §41A.015(i), these rules, or other law, as applicable, the property owner, property owner's agent, ARB, appraisal district, and arbitrator, as applicable, may provide written communications, notifications, and materials to each other using email, first-class mail, or any other method acceptable to the intended recipient of the communication, notification, or materials. Any written communications, notifications, and materials provided to the arbitrator shall also be provided to all other parties to the arbitration.

*§9.4212. Arbitration Proceedings.*

(a) Necessary Parties. Necessary parties to LBA under Tax Code, §41A.015, include the property owner or the property owner's agent, the chief appraiser, and the ARB. Necessary parties to RBA under Tax Code, §41A.01, include the property owner or the property owner's agent and the appraisal district.

(b) Requirements. An arbitrator who accepts an appointment shall conduct each arbitration proceeding pursuant to the terms of Tax Code, Chapter 41A, and this subchapter, and for a fee that is not more than the applicable amount stated in Tax Code, §41A.015(p)(2) or §41A.06(b)(4), as applicable.

(c) Arbitrator professionalism. The arbitrator shall determine the level of formality or informality of arbitration proceedings; however, the arbitrator must behave professionally while rendering arbitration services. The arbitrator shall not engage in conduct that creates a conflict of interest.

(d) Arbitration hearing types. Arbitrations may be conducted in person or by telephone or video conference call. The arbitrator may

decide the manner of the arbitration hearing unless the property owner or the property owner's agent selects a specific format on the request for binding arbitration.

(e) In-person arbitration hearing requirements. Unless all necessary parties agree otherwise, if the arbitration is conducted in person, the arbitrator and all necessary parties shall appear in person for the arbitration hearing. If the arbitration is in person, the arbitration hearing must be held in the county where the subject property is located, unless all necessary parties agree to another location. The selected location must be in an office-like setting generally open to the public or to the arbitrator. The arbitrator is responsible for identifying and reserving the arbitration hearing location and is responsible for any location costs incurred. Neither the property owner, the appraisal district, nor the ARB, may be charged an additional fee or requested to provide additional monies to participate in an in-person arbitration.

(f) Arbitrator initiation of arbitration hearing. Promptly upon acceptance of an appointment, the arbitrator shall contact all necessary parties by telephone or email to notify the parties of the arbitrator's appointment, propose one or more dates for the arbitration hearing, and request alternate arbitration hearing dates from the parties if the date(s) proposed is not acceptable. The arbitrator should cooperate with all necessary parties in scheduling the arbitration hearing.

(g) Notice of arbitration hearing. The arbitrator shall set the arbitration hearing date and serve written notice of the arbitration hearing under subsection (h) of this section as follows:

(1) where the arbitrator received written agreement from all necessary parties on an arbitration hearing date, the arbitrator shall serve the written notice of arbitration hearing to all necessary parties in the method acceptable to each party; or

(2) where written agreement from all necessary parties is not obtained after 14 calendar days of the arbitrator's initial contact attempt under subsection (f) of this section, the arbitrator shall set the arbitration hearing date, providing a minimum of 21 calendar days' notice before the arbitration hearing, and shall serve the notice of arbitration hearing by:

(A) serving a copy of the notice to all necessary parties by email, if available; and

(B) providing a paper copy of the notice to the property owner through the U.S. Postal Service or a private third-party service such as FedEx or United Parcel Service (UPS) as long as proof of delivery is provided.

(h) Contents of arbitration hearing notice. The arbitrator shall include the following information in the written notice of arbitration hearing:

(1) the arbitration number;

(2) the date and time of the arbitration hearing;

(3) the physical address of the arbitration hearing location if the arbitration hearing is in person, or instructions concerning how to participate in the arbitration hearing if the hearing is by telephone or video conference call;

(4) the date by which the parties must exchange evidence before the arbitration hearing;

(5) the arbitrator's contact information, including email address, phone number, and mailing address, as well as a fax number, if available;

(6) a copy of the arbitrator's written procedures for the arbitration hearing;

(7) the methods by which the parties are to communicate and exchange materials, including by electronic means, U.S. first-class mail, or overnight or personal delivery; and

(8) any other matter about which the arbitrator wishes to advise the parties before the arbitration hearing.

(i) Continuance. The arbitrator may continue an arbitration hearing:

(1) for reasonable cause; or

(2) if all necessary parties agree to the continuance.

(j) Failure to appear and waiver of defective notice. The arbitrator may hear and determine the controversy on the evidence produced at the arbitration hearing as long as notice was provided pursuant to subsection (g) of this section. Appearance at the arbitration hearing waives any defect in the notice.

(k) Evidence. Each party at the arbitration hearing is entitled to be heard, present evidence material to the controversy, and cross-examine witnesses. The arbitrator shall ask each witness testifying to swear or affirm that the testimony they are about to give shall be the truth, the whole truth, and nothing but the truth. The arbitrator's decision is required to be based solely on the evidence provided at the arbitration hearing.

(l) Availability of arbitration hearing procedures. The arbitrator shall have a written copy of the arbitrator's hearing procedures available at the arbitration hearing.

(m) Recording proceedings. The parties shall be allowed to record audio of the proceedings. Video recordings require the consent of the arbitrator.

(n) Confidentiality. Information provided to an arbitrator that is made confidential by law may not be disclosed except as provided by law. That portion of the materials considered confidential must be designated as such to protect it from disclosure.

(o) Ex parte communications. The arbitrator shall not initiate, permit, or consider an ex parte communication made to the arbitrator by a party outside the presence of the other parties at any time before the LBA or RBA award is issued, concerning specific evidence, argument, facts, or the merits of the arbitration. Such ex parte communications may be grounds for the removal of the arbitrator from the comptroller's registry of arbitrators.

(p) Processing time. The arbitrator must complete an arbitration proceeding in a timely manner and must make every effort to complete the proceeding within 120 calendar days after the arbitrator's acceptance of the appointment. Failure to timely complete arbitration proceedings may constitute good cause for removal from the comptroller's registry of arbitrators.

§9.4213. *Substitution of Arbitrator Assigned to Arbitration Hearing.*

(a) Substitution prior to arbitration hearing. The comptroller shall remove an arbitrator from an arbitration and substitute a different arbitrator prior to the arbitration hearing taking place if the division director determines by clear and convincing evidence there is good cause for such removal.

(b) Substitution prior to award. After an arbitration hearing is held and prior to issuance of the award, an arbitrator may be removed from an arbitration and a substitute arbitrator appointed where a disaster or emergency, as defined by Government Code, §418.004 or §433.001, impacts the arbitrator's ability to complete the arbitration in compliance with this subchapter. Substitution may also take place if, as determined by the division director in the exercise of the division director's discretion, the arbitrator experiences a personal emergency,



rendering them incapable of completing the arbitration in compliance with this subchapter. The substitute arbitrator appointed under this subsection shall comply with Subchapter K of this chapter in facilitating and completing a new hearing.

(c) Good cause for substitution. Good cause for substitution under subsection (a) of this section includes the following:

(1) the individual is not eligible or becomes ineligible under the terms of §9.4260 or §9.4263 of this title, as applicable;

(2) the individual violates one or more provisions of this subchapter;

(3) there is a pending request for the arbitrator's removal from the registry of arbitrators and the division director, in the exercise of the division director's discretion, believes the request could impact the arbitrator's ability to conduct a fair and impartial arbitration hearing; or

(4) the division director determines, in the exercise of the division director's discretion, that substitution is in the interests of providing for a fair, impartial arbitration hearing.

(d) Clear and convincing evidence. For purposes of this section, clear and convincing evidence means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations.

(e) Filing of substitution request. A party to an arbitration may request the substitution of an arbitrator by filing a written request with the division director. Requests must be received with sufficient time to process and investigate the request prior to the arbitration hearing if filed under subsection (a) of this section or prior to the award being issued if filed under subsection (b) of this section. If the arbitration hearing is held prior to resolution of a request under subsection (a) of this section, or an award is issued prior to resolution of a request under subsection (b) of this section, the request will be dismissed. All requests must contain the following:

(1) a letter, addressed to the division director and signed by the requestor, that identifies the arbitration, arbitrator, and the grounds for substitution under subsection (b) or (c) of this section; and

(2) copies of all available communications exchanged between the arbitrator and the parties, as applicable, that support the request.

(f) Confidentiality. Information reviewed under this section that is made confidential by law may not be disclosed except as provided by law. That portion of the materials considered confidential must be designated as such to protect it from disclosure.

(g) Dismissals. Requests for substitution shall be dismissed if:

(1) the conduct complained of does not meet the requirements of subsection (b) or (c) of this section; or

(2) the complaint is not timely or otherwise fails to meet the requirements of subsection (e) of this section.

(h) Processing time. The comptroller shall examine the request for substitution in a timely manner.

(i) Cure period. If good cause for substitution is found, the arbitrator shall be notified by the comptroller and, where applicable, given the chance to cure the violation by the deadline established in the comptroller's notice. If the arbitrator does not cure the violation by the deadline established in the comptroller's notice, the arbitrator shall be removed and a new arbitrator substituted. The comptroller shall keep a record of any removals under subsection (a) of this section in the arbitrator's file.

(j) No appeal. The determination of a request for substitution, including dismissal of the request, or the removal of an arbitrator under this section is final and may not be appealed.

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

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For further information, please call: (512) 475-2220

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## DIVISION 2. LIMITED BINDING ARBITRATION FOR PROCEDURAL VIOLATIONS

### 34 TAC §§9.4220 - 9.4226

The Comptroller of Public Accounts adopts new §9.4220, concerning request for LBA; §9.4221, concerning LBA deposit; §9.4222, concerning comptroller appointment of arbitrators for LBA; §9.4223, concerning dismissal for lack of jurisdiction; §9.4224, concerning LBA award; §9.4225, concerning correction of procedural violations; and §9.4226, concerning payment of arbitrator fees, with changes to the proposed text as published in the January 5, 2024, issue of the *Texas Register* (49 TexReg 18). The rules will be republished.

The new sections will be located in Subchapter K, in new Division 2 (Limited Binding Arbitration for Procedural Violations). The comptroller will repeal all current sections in Subchapter K in a separate rulemaking.

The new sections establish procedures concerning limited binding arbitration (LBA) for certain alleged procedural violations during the local protest process under Tax Code, §41A.015.

Section 9.4220 describes the process for requesting LBA to compel the appraisal review board (ARB) or the chief appraiser to take certain actions under Tax Code, §41A.015.

Section 9.4221 requires a deposit to be submitted with each LBA and details the amount of deposit that must be submitted.

Section 9.4222 describes the comptroller's process for appointing arbitrators for LBA.

Section 9.4223 addresses the reasons for which an arbitrator shall dismiss a pending request for LBA with prejudice, for lack of jurisdiction.

Section 9.4224 provides the process and requirements for the issuance of an LBA award by an arbitrator.

Section 9.4225 sets forth the process of correcting procedural violations committed by the chief appraiser or ARB following the issuance of an LBA award.

Section 9.4226 describes the payment and processing of arbitrator fees in an LBA.

The comptroller received comments regarding adoption of the amendments from Dr. Loretta L. Higgins and the Texas Association of Appraisal Districts (TAAD).

Dr. Higgins states that §9.4224 refers "to the fact that cases may be dismissed for circumstances prescribed in Section 171 of the Civil Code." She asks whether the language in §9.4224 means that "even if the arbitrator who conducts the LBA is in violation of the Section 171 of the Texas Civil Code the opinion is not subject to appeal." Dr. Higgins also asks whether it means that "an arbitrator may behave in any manner they choose during an LBA (possibly engaging in bias) and that a potentially defective award is still not subject to appeal." Although the comptroller thanks Dr. Higgins for submitting this comment, the comptroller declines to make changes to the rules in response to this comment because Tax Code, 41A.015(j)(4) states the award is final and may not be appealed. Arbitrators who violate any rules under this subchapter may be subject to substitution under §9.4213 and disciplinary action under §9.4265.

TAAD asks that the forms or the rules regarding the forms and the LBA award address how the arbitrator gets paid if the appraisal district loses an arbitration hearing and whether the appraisal districts will have to link an online bank account to the online arbitration system. In response to these comments, the comptroller revises §9.4226(c) to require appraisal districts to pay the arbitrator's fee under Tax Code, §41A.015(k) outside of the online arbitration system.

Additionally, "TAAD suggests requiring a short explanation for an arbitrator's decision in a LBA award" because currently, "there is no way to determine what changes may be needed to prevent future procedural violations." The comptroller declines to make changes to the rules in response to this comment because the requirements of an LBA award are already outlined in Tax Code, §41A.015(j).

The comptroller thanks TAAD for submitting these comments.

The new sections are adopted under Tax Code, §41A.13, which authorizes the comptroller to adopt rules necessary to implement and administer Tax Code, Chapter 41A, concerning appeal through binding arbitration.

The new sections implement Tax Code, Chapter 41A.

*§9.4220. Request for LBA.*

(a) Actions reviewable in LBA. A property owner who has filed a notice of protest under Tax Code, Chapter 41, may file a request for LBA to compel the ARB or the chief appraiser to take certain actions under Tax Code, §41A.015(a).

(b) Waiver of right to seek LBA. A property owner waives their right to seek LBA under Tax Code, §41A.015, if:

(1) under Tax Code, §41A.015(a)(5), there was no request that the ARB hearing be postponed, or the property owner or the property owner's agent was offered a postponement and chose to proceed with the ARB protest; or

(2) under Tax Code, §41A.015(a)(7), there was an offer to postpone the ARB hearing upon the objected-to evidence being provided and the property owner or the property owner's agent chose to proceed with the ARB protest.

(c) Requirements for processing. A request for LBA that meets the following terms and conditions will be processed by the comptroller:

(1) The request was submitted in accordance with Tax Code, §41A.015, §9.4204 of this title, and this section.

(2) The request includes a deposit that meets the requirements of §9.4204 and §9.4221 of this title.

(d) Multiple alleged violations or properties. LBA requests are confined to a single tax year and a single property owner. The property owner may file for multiple alleged procedural violations for a single property or for multiple properties owned by a single property owner. If the request involves multiple alleged procedural violations or multiple properties, each individual allegation and property must separately meet the requirements of this section, except that a single deposit is required.

*§9.4221. LBA Deposit.*

(a) Deposit amount. A deposit shall be submitted with each request for LBA in the following amount, as applicable:

(1) \$450 if the property qualifies as the property owner's residence homestead under Tax Code, §11.13, and the appraised or market value, as applicable, is \$500,000 or less as determined by the appraisal district for the most recent tax year.

(2) \$550 for all property not subject to paragraph (1) of this subsection.

(b) Multiple properties. Where the property owner has appealed multiple properties, with one or more qualifying under subsection (a)(1) of this section and one or more qualifying under subsection (a)(2) of this section; the deposit must be made in the amount of subsection (a)(2) of this section.

*§9.4222. Comptroller Appointment of Arbitrators for LBA.*

(a) Qualifications. The comptroller shall appoint to a pending request for LBA an individual who meets the requirements of Tax Code, §41A.015(p) and is included in the registry of arbitrators under §9.4260 of this title.

(b) Use of computer system for appointment. The comptroller shall use a computer system that distributes the arbitration appointments as evenly as possible among qualified and eligible arbitrators included in the registry of arbitrators.

*§9.4223. Dismissal for Lack of Jurisdiction.*

(a) Reasons for dismissal. The arbitrator shall dismiss a pending request for LBA with prejudice, for lack of jurisdiction, if:

(1) except as allowed by Tax Code, §41A.10, taxes on the property subject to the appeal are delinquent because, for any prior year, all property taxes due have not been paid or because, for the year at issue, the undisputed tax amount was not paid before the delinquency date set by the applicable section of Tax Code, Chapter 31;

(2) no notice of protest under Tax Code, Chapter 41, was filed prior to the request for LBA being filed under Tax Code, §41A.015(a);

(3) the requestor seeks to compel the ARB or chief appraiser to take an action that is not authorized by Tax Code, §41A.015(a);

(4) the requestor failed to timely provide written notice to the chair of the ARB, the chief appraiser, and the taxpayer liaison officer for the applicable appraisal district by certified mail, return receipt requested, of the procedural requirement(s) with which the property owner alleges the ARB or chief appraiser was required to comply under Tax Code, §41A.015(b)(1);

(5) the requestor failed to timely file the request for LBA under Tax Code, §41A.015(d), which requires filing it no earlier than

the 11th day and no later than the 30th day after the date the property owner delivered the notice required by Tax Code, §41A.015(b)(1);

(6) the chief appraiser or ARB chair delivered a written statement to the property owner on or before the 10th day after the notice described by Tax Code, §41A.015(b)(1), was delivered confirming that the ARB or chief appraiser would comply with the requirement or cure a failure to comply with the requirement;

(7) a lawsuit was filed in district court regarding the same issues, for the same properties, and for the same tax year for which the request was filed;

(8) the property owner or the property owner's agent and the appraisal district have executed a written agreement resolving the matter; or

(9) the request for LBA was filed by an agent who does not have proper authority to act as an agent for the property owner under Tax Code, §41A.08 and §9.4205 of this title.

(b) An arbitrator shall dismiss any individual properties for which subsection (a) of this section applies and the case will move forward with only the remaining properties.

*§9.4224. LBA Award.*

(a) Questions of jurisdiction. In all arbitrations, the arbitrator shall first determine any questions of jurisdiction.

(b) Arbitrator's determination. If jurisdiction exists, the arbitrator shall render a determination on whether there was a violation of the procedural requirements submitted for review. A separate determination must be made for each individual alleged procedural violation and each individual property. If a violation is found, the arbitrator shall direct the ARB or chief appraiser, as applicable, to either comply with the procedural requirement or, if the ARB determination has been issued, to rescind the ARB order and hold a new ARB hearing that complies with the procedural requirements.

(c) Arbitrator's award. Within 20 calendar days of the conclusion of the arbitration hearing, the arbitrator shall render and issue an LBA award in the online arbitration system. The arbitrator shall deliver a copy of the LBA award by first class mail to any property owner not participating in the online arbitration system.

(d) No appeal of LBA award. An LBA award is final and may not be appealed.

*§9.4225. Correction of Procedural Violations.*

Upon receipt of the LBA award, the chief appraiser or ARB, as applicable, shall:

(1) Take any action required to comply with the requirements of the LBA award;

(2) Rescind the ARB order and schedule and conduct a new ARB hearing, as applicable; and

(3) Notify the comptroller if there is a pending request for RBA under Tax Code, §41A.01, involving the same tax year, property owner, and properties.

*§9.4226. Payment of Arbitrator Fees.*

(a) Amount of arbitrator fee. The arbitrator fee for LBA shall not exceed the applicable amount specified in Tax Code, §41A.015(p)(2).

(b) Multiple properties. Where the property owner has appealed multiple properties, some qualifying under Tax Code, §41A.015(p)(2)(A) and some qualifying under Tax Code, §41A.015(p)(2)(B), the fee shall not exceed the amount specified in Tax Code, §41A.015(p)(2)(B).

(c) Processing of arbitrator fees. Payment of arbitrator fees shall be processed in accordance with Tax Code, §41A.015(k) and (l), and §9.4209 of this title. For payments of arbitrator's fees by appraisal districts under Tax Code, §41A.015(k), the payment shall be made outside of the online arbitration system.

(d) Multiple ARB hearing procedural violations. Where the property owner alleges more than one ARB hearing procedural violation or alleges the same violation on more than one property, the arbitrator fee shall be paid in accordance with Tax Code, §41A.015(k), unless the arbitrator found no violations of any of the ARB hearing procedural requirements submitted for review.

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

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### DIVISION 3. REGULAR BINDING ARBITRATION OF APPRAISAL REVIEW BOARD DETERMINATIONS

#### **34 TAC §§9.4240 - 9.4247**

The Comptroller of Public Accounts adopts new §9.4240, concerning request for RBA; §9.4241, concerning RBA deposit; §9.4242, concerning RBA 45-day settlement period; §9.4243, concerning comptroller appointment of arbitrators for RBA; §9.4244, concerning dismissals for lack of jurisdiction; §9.4245, concerning RBA award; §9.4246, concerning correction of appraisal roll; and §9.4247 concerning payment of arbitrator fees, with changes to the proposed text as published in the January 5, 2024, issue of the *Texas Register* (49 TexReg 20). The rules will be republished. The new sections will be located in Subchapter K, in new Division 3 (Regular Binding Arbitration of Appraisal Review Board Determinations). The comptroller will repeal all current sections in Subchapter K in a separate rulemaking.

The new sections update the procedures concerning regular binding arbitration (RBA) to appeal values determined by local appraisal review boards (ARBs) under Tax Code, §41A.01.

Section 9.4240 explains the process for requesting RBA to contest an ARB order determining a protest under Tax Code, §41A.01.

Section 9.4241 requires a deposit to be submitted with each RBA and describes the amount of deposit that must be submitted.

Section 9.4242 describes the 45-day settlement period that allows the parties to try to settle the RBA case or determine that the request for RBA should be withdrawn timely before an arbitrator is appointed. It also sets forth the requirements for waiving the 45-day settlement period.

Section 9.4243 provides the comptroller's process for appointing arbitrators for an RBA.

Section 9.4244 details the reasons for which an arbitrator shall dismiss with prejudice a pending request for RBA for lack of jurisdiction.

Section 9.4245 describes the process and requirements for the issuance of an RBA award by an arbitrator.

Section 9.4246 requires the chief appraiser to correct the appraised or market value, as applicable, of the property as shown on the appraisal roll to reflect an RBA award only where the arbitrator's value is lower than the value determined by the ARB.

Section 9.4247 describes the payment and processing of arbitrator fees in an RBA.

The comptroller received comments regarding adoption of the amendments from Dr. Loretta L. Higgins, Harris Central Appraisal District (HCAD), Fort Bend Central Appraisal District (FBCAD), Texas Association of Appraisal Districts (TAAD), and Williamson Central Appraisal District (WCAD).

Dr. Higgins comments that §9.4245 "states that all awards must be mailed via first class mail." She asks whether this would "still apply when the online arbitration system is implemented" and whether an arbitrator could also issue the award in this manner "if all parties are in agreement to receive correspondence via email." No changes are necessary in response to this comment because §9.4245 states that the award must be entered into the online system once available and that mailed awards apply only to property owners without agents who choose not to participate in the online system.

Dr. Higgins comments that a provision should be included in §9.4247 providing a timeline in which appraisal districts must remit funds to an arbitrator. Dr. Higgins recommends that the comptroller implement guidelines that arbitrators be paid within 30 days of award receipt. She asserts that several instances have occurred "in the past when counties have been unhappy with the arbitrator's ruling and have delayed payment of funds to the arbitrator for 120 days and beyond." The comptroller declines to make changes to the rules in response to this comment because the comptroller does not have statutory authority to enforce such a deadline.

Regarding §9.4247, Dr. Higgins recommends adding a provision in the rules "to accommodate the arbitrator in the event the comptroller refunds the payment to the property owner when it is due to the arbitrator less the \$50 administration fee" to prevent an arbitrator from losing payments due to them. The comptroller declines to make changes to the rules in response to this comment because the online arbitration system should resolve any mistakes regarding incorrect payments.

The comptroller thanks Dr. Higgins for submitting these comments.

HCAD comments that the comptroller should extend the 45-day settlement period in §9.4242(a) to 60 days. HCAD believes that "both the filer and the district will benefit by allowing more time to potentially settle cases" because of "the volume of RBA's submitted and the uncertainty on how quickly applications will be processed with the Comptroller's new online arbitration system." HCAD also believes that the settlement period of RBA's should be extended because "the district and filers have limited resources and many RBA's that could potentially be settled may go to a hearing due to time limitations." Although the comptroller thanks HCAD for submitting these comments, the comptroller declines to make changes to the rules in response to this comment because the 45-day period is sufficient and extending the

settlement period would delay the resolution of the taxpayer's request.

FBCAD requests notice of the acceptance of appointment by an arbitrator from the comptroller under §9.4243 to prevent an appraisal district from "having to follow up with the comptroller concerning appointments for any particular arbitration and to facilitate a faster resolution of hearings." The comptroller declines to make changes to the rules in response to this comment because the online arbitration system will notify appraisal districts when an arbitrator has accepted an appointment.

FBCAD recommends adding "an appeal filed in district court under Tax Code §41.45(f)" to the reasons for dismissal in §9.4244(a)(5). The comptroller declines to make changes to the rules in response to this comment because litigation filed under Tax Code, §41.45(f) would impact jurisdiction for limited binding arbitration (LBA), not RBA, and §9.4223 already addresses a dismissal for this reason with regard to LBA.

FBCAD requests §9.4245(d) be removed from the rules because, for a residence homestead, "only a determination of the appraised value is authorized for an award in an RBA." FBCAD states that once a determination of the appraised value is made by the arbitrator, it is the chief appraiser that applies the provisions of Tax Code, Chapter 23. The comptroller declines to make changes to the rules in response to this comment because the appraised value of residence homesteads is accorded special treatment by Tax Code, §23.23, and the subsection informs arbitrators of those requirements.

In connection with a separate rulemaking, FBCAD recommends providing a definition of "settlement period" in §9.4202 "as described in §9.4242(a)." The comptroller declines to make changes to the definition of "settlement period" in §9.4202; however, the comptroller rewords each mention of "settlement period" to "45-day settlement period" in §9.4242(b) and §9.4243(a).

The comptroller thanks FBCAD for submitting these comments.

TAAD asks that the forms or the rules regarding the Forms and the RBA award address how the arbitrator gets paid if the appraisal district loses an arbitration hearing and whether the appraisal districts will have to link an online bank account to the online arbitration system. In response to this comment, the comptroller revises §9.4247 to require appraisal districts to pay the arbitrator's fee outside of the online arbitration system.

TAAD requests that the 45-day settlement period in §9.4242(a) be extended to 60 days because a 60-day settlement period is needed to resolve arbitration disputes due to "quicker processing expected with the new online arbitration system and the volume of arbitrations filed in recent years." The comptroller declines to make changes to the rules in response to this comment because the 45-day period is sufficient and extending the settlement period would delay the resolution of the taxpayer's request.

TAAD suggests that §9.4245(c) and (d) should be removed from the rules and the arbitrators be required to determine value for RBA awards based on the evidence provided at the hearings because "the arbitrators should determine the values in dispute based on the evidence presented at the arbitration hearings and should not be recalculating appraisals under the special appraisal provisions of Tax Code, Chapter 23, Subchapter B, C, D, E or H, or the appraised value limitation under Tax Code, §23.23." The comptroller declines to make changes to the rules in response to this comment because the appraised value

of qualified open-space land and residence homesteads are accorded special treatment by Tax Code, Chapter 23, and the subsections inform arbitrators of those requirements. Additionally, arbitrators are informed by §9.4212(k) that their decision is required to be based solely on the evidence provided at the hearing.

The comptroller thanks TAAD for submitting these comments.

WCAD recommends including all options listed in §9.4240 and §9.4244 in the RBA award form, or the options should be deleted from the form and replaced with the applicable rules. The comptroller thanks WCAD for submitting these comments and, in response, changes the form to more closely match the applicable rules.

The new sections are adopted under Tax Code, §41A.13, which authorizes the comptroller to adopt rules necessary to implement and administer Tax Code, Chapter 41A, concerning appeal through binding arbitration.

The new sections implement Tax Code, Chapter 41A.

*§9.4240. Request for RBA.*

(a) Right of appeal in RBA. A property owner or the property owner's agent may appeal an ARB order determining a protest of property value through RBA under the terms and conditions of this section. A single ARB order may be appealed to RBA by only one property owner, even if multiple property owners are listed.

(b) Requirements for processing. A request for RBA will be processed for arbitration under Tax Code, §41A.01, if:

(1) The request for RBA concerns a property with an appraised or market value of \$5 million or less as determined by the ARB order, or the property qualifies as the property owner's residence homestead under Tax Code, §11.13;

(2) The only matter in dispute is the determination of a protest filed under either Tax Code, §41.41(a)(1), concerning the property's appraised or market value, or under Tax Code, §41.41(a)(2) concerning unequal appraisal of the property;

(3) The deposit meets the requirements of Tax Code, §41A.03(a)(2), and §9.4204 and §9.4241 of this title;

(4) Except as allowed by Tax Code, §41A.10, taxes on the property subject to the appeal are not delinquent because, for any prior year, all property taxes due have not been paid or because, for the year at issue, the undisputed tax amount was not paid before the delinquency date set by the applicable section of Tax Code, Chapter 31;

(5) No lawsuit has been filed in district court regarding the property for the same issue for the same tax year; and

(6) The request for RBA is timely filed pursuant to Tax Code, §41A.03, using the comptroller-prescribed form.

(c) Contiguous tracts. If the request for RBA involves contiguous tracts of land pursuant to Tax Code, §41A.03(a-1), each tract of land and ARB order must separately meet the requirements of subsection (b) of this section, except that a single arbitration deposit is required. The combined total value of all ARB orders appealed may exceed the \$5 million threshold requirement in subsection (b)(1) of this section as long as each individual tract is valued at \$5 million or less or has a residence homestead exemption. If the appraisal district indicates two or more tracts are not contiguous during its review of the property accounts subject to the request, the property owner may select the single or contiguous tracts that will be arbitrated during the 45-day settlement period. Otherwise, the arbitrator that accepts the ap-

pointment will move forward with the single or contiguous tracts that contain the property with the highest appraised or market value.

(d) Requests for in-county or out-of-county arbitrators. A property owner or the property owner's agent may request that the comptroller appoint an arbitrator for RBA who resides in the county in which the property that is the subject of the appeal is located or an arbitrator who resides outside that county. In appointing an initial arbitrator, the comptroller shall comply with the request of the property owner unless there is not an available arbitrator who resides in the county in which the property that is the subject of the request is located. In appointing a substitute arbitrator, the comptroller shall consider but is not required to comply with the request. This does not authorize a property owner to request the appointment of a specific individual as an arbitrator.

(e) Impact of LBA award on RBA request. If a property owner is granted a new ARB hearing as a result of an LBA award and the property owner has a pending request for RBA based on the same ARB proceedings that were at issue in the LBA, the property owner and appraisal district shall promptly notify the comptroller. The pending request for RBA will be considered withdrawn or dismissed for lack of jurisdiction, depending on its current status. The deposit shall be either paid to the arbitrator or refunded according to §9.4209 or §9.4244 of this title. This shall not impact the property owner's ability to file a new request for RBA based on a subsequent ARB order.

*§9.4241. RBA Deposit.*

(a) Amount of deposit. A deposit shall be submitted with each request for RBA in the applicable amount specified in Tax Code, §41A.03(a)(2).

(b) Deposit amount for contiguous tracts. The deposit amount required for arbitration of contiguous tracts of land must correspond with the tract on which subsection (a) of this section would require the largest deposit, if filed separately.

*§9.4242. RBA 45-Day Settlement Period.*

(a) Notice of processing. The parties shall have 45 calendar days after the date that the comptroller provides notice that the request for RBA has been processed under §9.4207 of this title in which to try to settle the case or determine that the request for RBA should be withdrawn timely before an arbitrator is appointed. A notice of withdrawal must be provided in accordance with §9.4208 of this title.

(b) Waiver of 45-day settlement period. A property owner or the property owner's agent may request to waive the 45-day settlement period. If the appraisal district agrees to the waiver, the comptroller shall appoint an arbitrator to the request for RBA pursuant to §9.4243 of this title.

*§9.4243. Comptroller Appointment of Arbitrators for RBA.*

(a) Appointment of arbitrator. After the conclusion of the 45-day settlement period or waiver of the 45-day settlement period, the comptroller shall appoint an individual included in the comptroller's registry of arbitrators who is both qualified and eligible for the particular appointment under §§9.4240(d), 9.4260, and 9.4263 of this title.

(b) Use of computer system for appointment. The comptroller shall use a computer system that distributes the arbitration appointments as evenly as possible among qualified and eligible arbitrators included in the comptroller's registry of arbitrators.

*§9.4244. Dismissals for Lack of Jurisdiction.*

(a) Reasons for dismissal. For requests for RBA filed under Tax Code, §41A.01, the arbitrator shall dismiss with prejudice a pending request for RBA for lack of jurisdiction, if:

(1) except as allowed by Tax Code, §41A.10, taxes on the property subject to the appeal are delinquent because for any prior year, all property taxes due have not been paid or because, for the year at issue, the undisputed tax amount was not paid before the delinquency date set by the applicable section of Tax Code, Chapter 31;

(2) the ARB order(s) appealed did not determine a protest filed pursuant to Tax Code, §41.41(a)(1), concerning the appraised or market value, or Tax Code, §41.41(a)(2), concerning unequal appraisal of the property;

(3) the appraised or market value of the property as determined in the ARB order was either more than \$5 million or the property did not qualify as the property owner's residence homestead under Tax Code, §11.13;

(4) the request for RBA was filed after the deadline established in Tax Code, §41A.03, which requires submission by not later than the 60th calendar day after the date the property owner or the property owner's agent receives the ARB order determining the protest;

(5) the property owner or the property owner's agent filed an appeal with the district court under Tax Code, Chapter 42, concerning the value of the same property in the same tax year that is at issue in the pending RBA;

(6) the property owner or the property owner's agent and appraisal district have executed a written agreement resolving the matter;

(7) the request for RBA was filed by an agent without proper authority as described by Tax Code, §41A.08; or

(8) an LBA award rescinded the ARB order(s) under Tax Code, §41A.015(j)(2)(B).

(b) Contiguous tracts. When an RBA proceeding is brought pursuant to Tax Code, §41A.03(a-1), involving two or more contiguous tracts of land, the arbitrator shall dismiss from the proceeding any tract of land for which subsection (a) of this section applies. If, after dismissal, two or more tracts are not contiguous, the property owner may select the single or contiguous tracts that will be arbitrated. Otherwise, the arbitrator will determine the single or contiguous tracts that contain the property with the highest appraised or market value.

§9.4245. *RBA Award.*

(a) Questions of jurisdiction. In all arbitrations, the arbitrator shall first determine any questions of jurisdiction.

(b) Arbitrator's determination. If jurisdiction exists, the arbitrator shall determine the appraised or market value of the property that is the subject of the RBA.

(c) Special appraisal. If the arbitrator determines the property qualifies for special appraisal under Tax Code, Chapter 23, Subchapter B, C, D, E, or H, the statutory provisions regarding special appraisal, and the comptroller's rules and policies, including the comptroller's special appraisal manuals, must be followed in making the appraised value determination.

(d) Determination of value of residential homestead. If the arbitrator determines that a residence homestead's appraised value is less than its market value due to the appraised value limitation required by Tax Code, §23.23, the appraised value may not be changed unless:

(1) the arbitrator determines that the formula for calculating the appraised value of the property under Tax Code, §23.23 was incorrectly applied, and the change correctly applies the formula;

(2) the calculation of the appraised value of the property reflected in the ARB order includes an amount attributable to new improvements, and the change reflects the arbitrator's determination of the value contributed by the new improvements; or

(3) the arbitrator determines that the market value of the property is less than the appraised value indicated on the ARB order, and the change reduces the appraised value to the market value determined by the arbitrator.

(e) Arbitrator's award. Within 20 calendar days after the conclusion of the arbitration hearing, the arbitrator shall render a determination and issue the RBA award on the online arbitration system. The arbitrator shall deliver a copy of the RBA award by regular first-class mail to any property owner not participating in the online arbitration system.

(f) No appeal of RBA award. An RBA award is final and may not be appealed except as permitted under Civil Practice and Remedies Code, §171.088, and may be enforced in the manner provided by Civil Practice and Remedies Code, Chapter 171, Subchapter D.

§9.4246. *Correction of Appraisal Roll.*

The chief appraiser shall correct the appraised or market value, as applicable, of the property as shown on the appraisal roll to reflect the RBA award only where the arbitrator's value is lower than the value determined by the ARB.

§9.4247. *Payment of Arbitrator Fees.*

(a) Amount of arbitrator fee. The arbitrator fee for RBA shall not exceed the applicable amount specified in Tax Code, §41A.06(b)(4).

(b) Processing of arbitrator fees. Payment of arbitrator fees shall be processed in accordance with §9.4209 of this title and as follows:

(1) If the arbitrator determines that the appraised or market value, as applicable, of the property that is the subject of the appeal is nearer to the property owner's opinion of value as stated in the request for RBA than the value reflected in the ARB order, the comptroller shall refund the property owner's arbitration deposit. In this case, the appraisal district, on receipt of a copy of the RBA award, shall pay the arbitrator fee. Payments shall be made outside of the online arbitration system.

(2) If the arbitrator determines that the appraised or market value, as applicable, of the property that is the subject of the appeal is not nearer to the property owner's opinion of value as stated in the request for RBA than the value reflected in the ARB order, the comptroller shall pay the arbitrator fee out of the property owner's deposit.

(3) If the arbitrator determines that the appraised or market value, as applicable, of the property that is the subject of the appeal is exactly one-half of the difference in value between the property owner's opinion of value of the property as stated in the request for RBA and the ARB order, the comptroller shall process payment of the arbitrator fee and arbitration deposit pursuant to paragraph (2) of this subsection.

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

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## DIVISION 4. COMPTROLLER'S REGISTRY OF ARBITRATORS

### 34 TAC §§9.4260 - 9.4265

The Comptroller of Public Accounts adopts new §9.4260, concerning qualification for inclusion in comptroller's registry of arbitrators; §9.4261, concerning application requirements; §9.4262, concerning renewal requirements; §9.4263, concerning arbitrator eligibility for appointment; §9.4264, concerning arbitrator responsibility for registry profile; and §9.4265 concerning disciplinary action, with changes to the proposed text as published in the January 5, 2024, issue of the *Texas Register* (49 TexReg 22). The rules will be republished. The new sections will be located in Subchapter K, in new Division 4 (Comptroller's Registry of Arbitrators). The comptroller will repeal all current sections in Subchapter K in a separate rulemaking.

The new sections update the procedures concerning the comptroller's registry of arbitrators for regular binding arbitration to appeal values determined by local appraisal review boards under Tax Code, §41A.01, and limited binding arbitration for certain alleged procedural violations during the local protest process under Tax Code, §41A.015.

Section 9.4260 sets forth the requirements for an individual to be included in the comptroller's registry of arbitrators.

Section 9.4261 details the process and requirements for applying to be included in the comptroller's registry of arbitrators.

Section 9.4262 addresses the requirements for an arbitrator to continue to qualify for inclusion in the comptroller's registry of arbitrators.

Section 9.4263 sets forth eligibility requirements for appointment as an arbitrator to a particular arbitration proceeding.

Section 9.4264 requires arbitrators to update their registry profile on the online arbitration system and provide additional information required by the comptroller. It also addresses the effect of updated information that causes the arbitrator to become ineligible to serve as an arbitrator or to be removed from the comptroller's registry of arbitrators.

Section 9.4265 authorizes the comptroller to remove an arbitrator from the comptroller's registry of arbitrators or to render lesser disciplinary actions, and describes the process and requirements for taking such an action. The comptroller corrects a typographical error in §9.4265(c)(5) by deleting the word "of."

The comptroller received comments regarding adoption of the amendments from Frank D. McAllister and the Fort Bend Central Appraisal District (FBCAD).

Mr. McAllister states that §9.4263(d) "should be revised to include a requirement for the appraisal district to pay the arbitrator's award to the property owner within 30 days of receiving the award." Although the comptroller thanks Mr. McAllister for this comment, the comptroller declines to make changes to the rules

in response to this comment because the property owner's deposit is refunded by the comptroller's office, not the appraisal district, under Tax Code, §§41A.015(k) and (l), 41A.09(c), and 41A.10(b).

FBCAD recommends the confidentiality provisions of Government Code §552.149 be included as applicable to the information provided under §9.4265(g). The comptroller thanks FBCAD for submitting this comment and changes the rule to reference all applicable confidentiality laws.

The new sections are adopted under Tax Code, §41A.13, which authorizes the comptroller to adopt rules necessary to implement and administer Tax Code, Chapter 41A, concerning appeal through binding arbitration.

The new sections implement Tax Code, Chapter 41A.

§9.4260. *Qualification for Inclusion in Comptroller's Registry of Arbitrators.*

(a) Inclusion in the registry. To qualify for inclusion in the registry of arbitrators and continue to be included in the registry, an individual must meet the requirements of this section.

(b) Residency requirement.

(1) An individual must reside in the state of Texas. An individual who has been granted a residence homestead exemption on property they own and occupy in Texas satisfies the residency requirement.

(2) An individual does not qualify for inclusion in the registry of arbitrators if the individual has been granted a residence homestead exemption in another state or has been granted more than one such exemption.

(3) If an individual owns no property for which a residence homestead exemption has been granted in any state, the individual's residence will be considered the state of Texas if the individual lives in a residential property in Texas more than 50 percent of the individual's time.

(4) Falsely claiming to reside in Texas will result in the immediate removal of the individual from the registry and the reporting of this misconduct to the individual's professional licensing or certification board or regulatory authority.

(c) Professional qualifications. To qualify to serve as an arbitrator, an individual must meet the requirements described in Tax Code, §41A.06(b), including the following requirements:

(1) The individual must have completed the comptroller's courses for training and education of ARB members established under Tax Code, §5.041(a) and (e-1), and for the training and education of arbitrators established under Tax Code, §5.043, and be issued a certificate indicating completion of each course prior to applying to the registry.

(2) Individuals in any one of the occupations specified in Tax Code, §41A.06(b)(1)(B)(ii), must:

(A) have completed at least 30 hours of training described in Tax Code, §41A.06(B)(i), of which no more than three hours may be self-study or homework; and

(B) hold a current and continually active license in one of the occupations specified in Tax Code, §41A.06(b)(1)(B)(ii), during the five years preceding the application submission date.

(d) Disqualifying Employment. An individual does not qualify for inclusion in the registry of arbitrators during any period in which the individual holds any one of the following positions in this state:

- (1) member of a board of directors of any appraisal district;
- (2) member of any appraisal review board;
- (3) employee, contractor, or officer of any appraisal district;
- (4) employee of the comptroller; or
- (5) member of a governing body, officer, or supervisory or managerial employee of any taxing unit.

§9.4261. *Application Requirements.*

(a) Application submission. Individuals who wish to be included in the registry of arbitrators shall submit their applications through the online arbitration system or, if the online arbitration system is not available, by mailing or emailing the application form to the address specified by the comptroller.

(b) Attestation. By submitting the application and documentation required, the applicant attests that the applicant:

- (1) principally resides in the state of Texas in the county identified;
- (2) meets all of the qualifications required under §9.4260 of this title;
- (3) has read and understands the provisions of this subchapter and Tax Code, Title 1 (Property Tax Code);
- (4) will conduct all arbitrations under the terms of Tax Code, Chapter 41A, and this subchapter, as applicable;
- (5) will perform these arbitration services for the applicable fee specified in Tax Code, §41A.015(p)(2) or §41A.06(b)(4), as applicable; and

(6) will update the arbitrator's registry profile on the online arbitration system to notify the comptroller of any change in the arbitrator's registry profile, including any change in qualifications, eligibility, contact information, or any material change regarding information provided in the application, within 10 calendar days of the change.

(c) Denial of application. The comptroller shall deny an application if the applicant does not meet all of the requirements of §9.4260 of this title or if the division director, in the exercise of the division director's discretion, determines inclusion of the applicant in the registry would not be in the interest of impartial arbitration proceedings.

(d) Approval of application. If the application is approved, the applicant's name, county of residence in Texas, and other pertinent information will be added to the registry.

(e) Notification to applicant. The comptroller must notify the applicant of the approval or denial of the application as soon as practicable and, for a denial, must provide a brief explanation of the reason(s) for the denial.

(f) Update of registry. The registry will be updated within 30 calendar days of the date the comptroller approves and processes the application.

(g) Registry disclaimers. Inclusion of an arbitrator in the registry is not and shall not be construed as a representation by the comptroller that all information provided by the applicant is true and correct and shall not be construed or represented as a professional endorsement.

§9.4262. *Renewal Requirements.*

For an arbitrator to continue to qualify for inclusion in the registry, the arbitrator must:

(1) complete and submit the renewal form through the online arbitration system or, if the online arbitration system is not available, by mailing or emailing the renewal form to the address specified by the comptroller, on or before:

(A) each renewal date of the applicant's license or certification under which the applicant was qualified previously under §9.4260 of this title; or

(B) the second anniversary of the date the arbitrator was initially added to the registry or the arbitrator's listing on the registry was renewed;

(2) continue to meet the requirements in §9.4260 of this title;

(3) have no history of failure to comply with this subchapter;

(4) have completed during the preceding two years at least eight hours of continuing education in arbitration and alternative dispute resolution procedures offered by a university, college, or legal or real estate trade association. This continuing education requirement may be satisfied by submission of documentation that the arbitrator attended or taught personally at least eight hours of one or more training courses that meet the requirements of this paragraph;

(5) complete a revised comptroller training program on property tax law for the training and education of arbitrators established under Tax Code, §5.043, not later than the 120th day after the date the program is available to be taken if the comptroller:

(A) revises the program after the individual is included in the registry; and

(B) determines that the program is substantially revised.

§9.4263. *Arbitrator Eligibility for Appointment.*

(a) Eligibility for appointment. To be eligible for appointment as an arbitrator to a particular arbitration proceeding, an arbitrator must satisfy the requirements of this section.

(b) Engaging in activities in county's appraisal district. An arbitrator is ineligible for and shall not accept any appointment in a county in which the property that is the subject of the arbitration is located, if at any time during the two years preceding the appointment at issue, the arbitrator has engaged in the following activities in that county's appraisal district:

(1) represented any person or entity for compensation, or served as an officer or employee of any firm, company, or other organization that has represented another person or entity for compensation, in any proceeding under Tax Code, Title 1 (Property Tax Code);

(2) served as an officer or employee of the appraisal district; or

(3) served as a member of the appraisal review board for the appraisal district.

(c) Duration of proceeding. For purposes of subsection (b)(1) of this section, a proceeding under Tax Code, Title 1 (Property Tax Code), begins with the filing of a notice of protest and includes communications with appraisal district employees regarding a matter under protest, protest settlement negotiations, any appearance at an ARB hearing, any involvement in a binding arbitration under Tax Code, Chapter 41A, and any involvement at either the district court or appellate court level of an appeal pursued under Tax Code, Chapter 42.

(d) Family relationships. An arbitrator is ineligible for and shall not accept an appointment to any arbitration in which the arbitrator is related by affinity within the second degree or by consanguinity



within the third degree as determined under Government Code, Chapter 573, to any of the following individuals:

- (1) the property owner or the property owner's agent;
- (2) an officer, employee, or contractor of the appraisal district responsible for appraising the property at issue;
- (3) a member of the board of directors of the appraisal district responsible for appraising the property at issue; or
- (4) a member of the ARB in the area in which the property at issue is located.

(e) Business relationships. An arbitrator is ineligible for and shall not accept an appointment to any arbitration in which the arbitrator currently or during the previous two years has had a business relationship with the property owner, the property owner's agent, the ARB, or the appraisal district involved in that particular arbitration.

(f) Other conflicts of interest. An arbitrator is ineligible for and shall not accept an appointment to any arbitration in which the arbitrator knows of any other conflict of interest that has not been previously described above.

*§9.4264. Arbitrator Responsibility for Registry Profile.*

(a) Registry profile updates. Each arbitrator included in the registry of arbitrators is required to update the arbitrator's registry profile on the online arbitration system to notify the comptroller of any changes in contact information, including address, phone number, and email address, and any material change in the information provided in the arbitrator's application, qualifications, or eligibility for appointment, within 10 calendar days of the change. A material change includes loss of required licensure, incapacity, ineligibility, a change in county of residence, or other conditions that would prevent the individual from lawfully and professionally performing the arbitrator's arbitration duties. Once the arbitrator has submitted registry profile updates, the arbitrator will be notified that, pending review, the arbitrator will not be able to modify active cases on the online arbitration system or receive new appointments.

(b) Eligible to resume active status. If the information provided in the profile updates do not cause the arbitrator to be disqualified, the comptroller will return the arbitrator to active status, and the arbitrator will be able to access arbitration functions in the online arbitration system and receive new appointments.

(c) Ineligible to complete active cases. If any of the information provided in profile updates causes the arbitrator to be ineligible to act as an arbitrator in one or more of the arbitrator's active cases, the comptroller will reassign affected cases to an eligible arbitrator.

(d) Request for additional information. If the comptroller requires additional information, the comptroller shall notify the arbitrator of the information needed. Once the arbitrator submits the information needed, the comptroller will complete the review.

(e) Removal of arbitrator. Failure of the arbitrator to report a material change in the arbitrator's registry profile, or information provided in profile updates that cause the arbitrator to be disqualified, may result in the removal of the arbitrator from the registry upon its discovery and the denial of future applications for inclusion in the registry. An arbitrator's failure to report a material change as required by this section shall not affect the determinations and awards made by the arbitrator during the period that the arbitrator is listed in active status in the registry.

*§9.4265. Disciplinary Action.*

(a) Disciplinary action generally. The comptroller is authorized to remove an arbitrator from the registry or, in the comptroller's

discretion, to render lesser disciplinary actions including warnings, restriction of arbitrator eligibility for certain counties, or removal from individual arbitrations.

(b) Disciplinary history. The determination to discipline may be based solely on the information or complaint at issue or on a combination of the information or complaint and the arbitrator's disciplinary history.

(c) Good cause for removal. Good cause for removal includes the following grounds:

(1) the individual engaged in repeated instances of bias or misconduct while acting as an arbitrator;

(2) the individual engaged in fraudulent conduct;

(3) the individual is disqualified or becomes disqualified under §9.4260 of this title;

(4) the individual accepts a case in violation of §9.4263 of this title;

(5) the individual violates §9.4212 or §9.4264 of this title while acting as an arbitrator;

(6) the individual fails or declines to renew the agreement to serve as an arbitrator in the manner required under §9.4262 of this title; or

(7) the comptroller finds that inclusion of the applicant in the arbitration registry would not be in the interest of impartial arbitration proceedings.

(d) Disciplinary discretion. The comptroller may take appropriate disciplinary action where the comptroller finds clear and convincing evidence of a violation, even if that violation does not rise to the level of good cause to justify removal under subsection (c) of this section. In determining the level of discipline, the comptroller may consider not only the complaint at issue, but any disciplinary history in the arbitrator's file. Good cause for disciplinary action includes the following grounds:

(1) the individual is disqualified or becomes disqualified under §9.4262 of this title;

(2) the individual fails to respond to or refuses to comply with communications and requests for information from the comptroller's office by the deadline established in the communication; or

(3) the individual has violated one or more provisions of this subchapter.

(e) Clear and convincing evidence. For purposes of this section, clear and convincing evidence means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations regarding the arbitrator.

(f) Filing a complaint. An individual may file a complaint concerning an arbitrator with the comptroller within 60 calendar days of the last incident giving rise to the complaint. The complaint must contain the following items:

(1) a letter, addressed to the division director and signed by the requestor, that identifies the arbitrator complained of and the alleged grounds for removal or discipline;

(2) for grounds for removal under subsection (c) of this section, at least one affidavit or unsworn declaration meeting the requirements of Civil Practice and Remedies Code, §132.001, from an individual with first-hand knowledge of the alleged conduct that supports the complaint; and

(3) as applicable, copies of all available communications exchanged between the arbitrator and the parties, including emails, documents, and any other materials, such as video or audio recordings, that support the complaint.

(g) Confidentiality. Information reviewed under this section that is made confidential by law may not be disclosed except as provided by law. That portion of the materials considered confidential must be designated as such to protect it from disclosure.

(h) Dismissal. Complaints shall be dismissed under the following conditions:

(1) the conduct complained of does not meet the requirements of this section;

(2) the complaint is not timely or otherwise fails to meet the requirements of subsection (f) of this section; or

(3) the complaint is based on one or more substantive arbitration issues, including evidentiary considerations and the resulting award.

(i) Initial review of complaints. Within 30 calendar days after submission of a complaint under this section, the comptroller shall notify the complainant whether the complaint is under review or dismissed. The dismissal of a complaint is final and may not be appealed. If the complaint is under review, all materials the complainant submitted will be forwarded electronically, by U.S. Postal Service, or by a private third-party service such as FedEx or United Parcel Service (UPS), as long as proof of delivery is provided, to the arbitrator who is the subject of the complaint for a response.

(j) Arbitrator response. The arbitrator has 30 calendar days from delivery of the materials to respond to the comptroller, explaining why a finding of good cause should not be made.

(k) Post-response review and determination. Within 30 calendar days after receipt of the arbitrator's response, the comptroller shall determine whether clear and convincing evidence supports a finding of good cause for removal of the arbitrator from the registry or disciplinary action. The comptroller shall promptly notify the complainant and the arbitrator of the comptroller's determination.

(l) Removal or disciplinary action. If good cause for removal of the arbitrator from the registry under subsection (c) of this section is found, the arbitrator shall be removed from the registry for a period of two years from the date of the determination. If, in the comptroller's discretion, clear and convincing evidence of a violation is established, however, after reviewing the violation and the arbitrator's file, the comptroller does not find it rises to the level of good cause for removal, the comptroller may issue disciplinary action. Prior disciplinary action may be considered in future complaints. If there is neither good cause for removal nor clear and convincing evidence of a violation, no disciplinary action will be taken.

(m) No appeal. The comptroller's determination and a removal or disciplinary action is final and may not be appealed. An arbitrator removed from the registry under subsection (c) of this section may reapply for inclusion in the registry two years after the date of the removal determination. The circumstances giving rise to the removal under this section may be considered in evaluating the reapplication.

(n) No effect on determinations and awards. Any disciplinary action taken shall not affect the determinations and awards made by the arbitrator during the period that the arbitrator is listed in active status in the registry.

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

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General Counsel for Fiscal and Agency Affairs

Comptroller of Public Accounts

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For further information, please call: (512) 475-2220

