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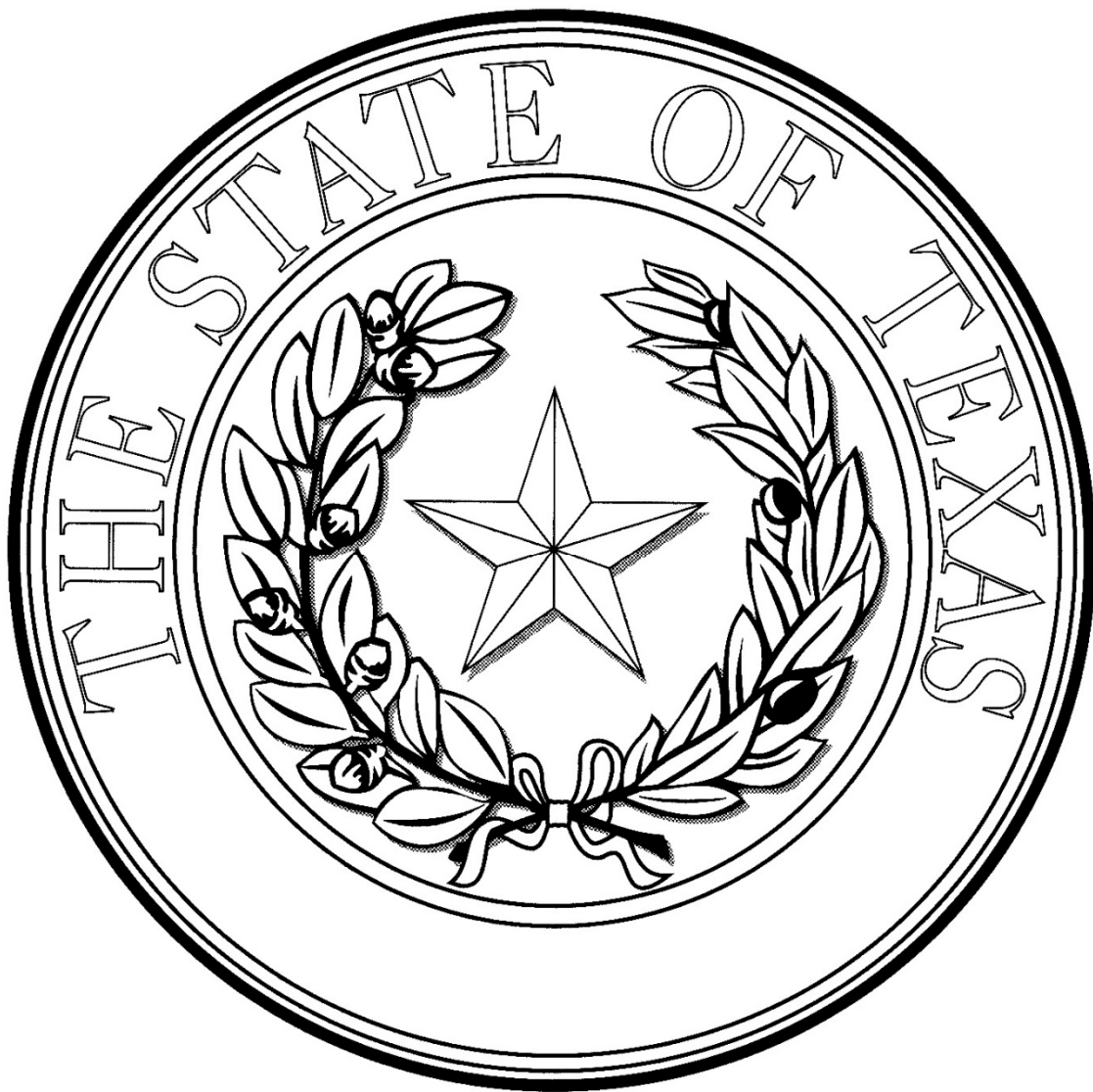
# TEXAS REGISTER

*Volume 48 Number 34*

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# TEXAS REGISTER

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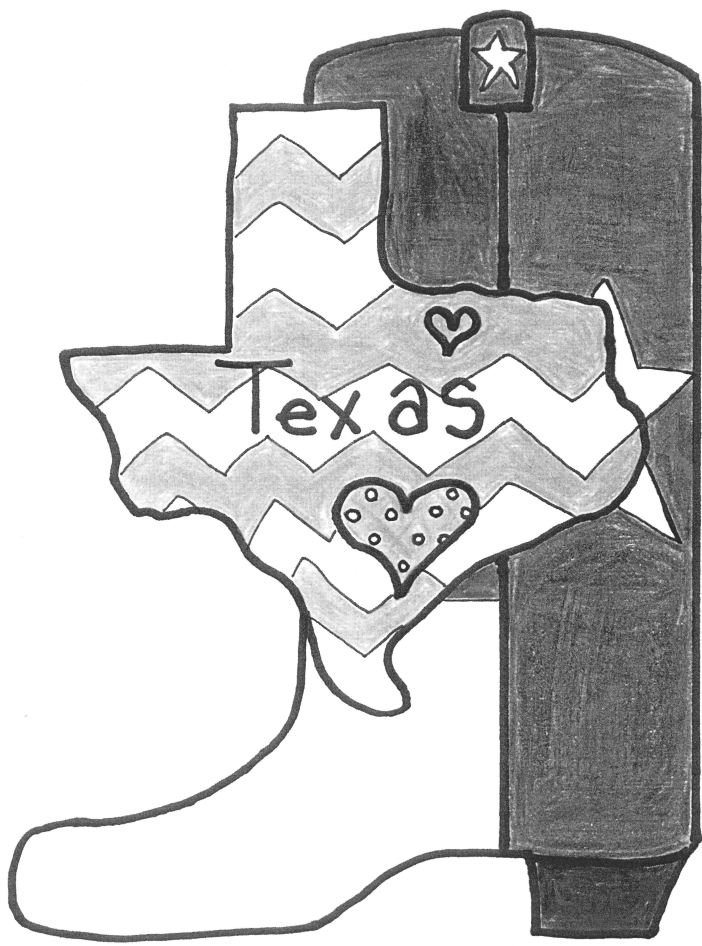
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# THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Proclamation 41-4068

## TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, the 88th Regular Session of the Texas Legislature convened in January 2023 in accordance with Article III, Section 5, of the Texas Constitution and Section 301.001 of the Texas Government Code; and

WHEREAS, during that session, the Legislature approved thirteen joint resolutions proposing thirteen particular constitutional amendments by a vote of two-thirds of all members of each house, pursuant to Article XVII, Section 1, of the Texas Constitution; and

WHEREAS, the 88th Texas Legislature, Second Special Session, convened in June 2023 in accordance with Article III, Sections 5 and 40, and Article IV, Section 8, of the Texas Constitution; and

WHEREAS, during that special session, the Legislature approved one joint resolution proposing one particular constitutional amendment by a vote of two-thirds of all members of each house, pursuant to Article XVII, Section 1, of the Texas Constitution; and

WHEREAS, pursuant to the terms of those resolutions and in accordance with the Texas Constitution, the Legislature has set the date of the election for voting on the fourteen proposed constitutional amendments to be November 7, 2023; and

WHEREAS, Section 3.003 of the Texas Election Code requires the election to be ordered by proclamation of the governor;

NOW, THEREFORE, I, GREG ABBOTT, Governor of the State of Texas, by the authority vested in me by the Constitution and Statutes of the State of Texas, do hereby order a special election to be held throughout the State of Texas on the FIRST TUESDAY AFTER THE FIRST MONDAY IN NOVEMBER, the same being the SEVENTH day of NOVEMBER, 2023.

NOTICE THEREOF IS HEREBY GIVEN to the COUNTY JUDGE of each county, who is directed to cause said election to be held in the county on such date for the purpose of adopting or rejecting the fourteen constitutional amendments proposed by fourteen joint resolutions, as submitted by the 88th Texas Legislature, Regular Session, and the 88th Texas Legislature, Second Called Session, of the State of Texas.

Pursuant to Sections 52.095, 274.001, and 274.002 of the Texas Election Code, the propositions for the joint resolutions will appear as follows:

### STATE OF TEXAS PROPOSITION NO. 1

"The constitutional amendment protecting the right to engage in farming, ranching, timber production, horticulture, and wildlife management."

### STATE OF TEXAS PROPOSITION NO. 2

"The constitutional amendment authorizing a local option exemption from ad valorem taxation by a county or municipality of all or part of the appraised value of real property used to operate a child-care facility."

### STATE OF TEXAS PROPOSITION NO. 3

"The constitutional amendment prohibiting the imposition of an individual wealth or net worth tax, including a tax on the difference between the assets and liabilities of an individual or family."

### STATE OF TEXAS PROPOSITION NO. 4

"The constitutional amendment to authorize the legislature to establish a temporary limit on the maximum appraised value of real property other than a residence homestead for ad valorem tax purposes; to increase the amount of the exemption from ad valorem taxation by a school district applicable to residence homesteads from \$40,000 to \$100,000; to adjust the amount of the limitation on school district ad valorem taxes imposed on the residence homesteads of the elderly or disabled to reflect increases in certain exemption amounts; to except certain appropriations to pay for ad valorem tax relief from the constitutional limitation on the rate of growth of appropriations; and to authorize the legislature to provide for a four-year term of office for a member of the board of directors of certain appraisal districts."

### STATE OF TEXAS PROPOSITION NO. 5

"The constitutional amendment relating to the Texas University Fund, which provides funding to certain institutions of higher education to achieve national prominence as major research universities and drive the state economy."

### STATE OF TEXAS PROPOSITION NO. 6

"The constitutional amendment creating the Texas water fund to assist in financing water projects in this state."

### STATE OF TEXAS PROPOSITION NO. 7

"The constitutional amendment providing for the creation of the Texas energy fund to support the construction, maintenance, modernization, and operation of electric generating facilities."

### STATE OF TEXAS PROPOSITION NO. 8

"The constitutional amendment creating the broadband infrastructure fund to expand high-speed broadband access and assist in the financing of connectivity projects."

### STATE OF TEXAS PROPOSITION NO. 9

"The constitutional amendment authorizing the 88th Legislature to provide a cost-of-living adjustment to certain annuitants of the Teacher Retirement System of Texas."

### STATE OF TEXAS PROPOSITION NO. 10

"The constitutional amendment to authorize the legislature to exempt from ad valorem taxation equipment or inventory held by a manufacturer of medical or biomedical products to protect the Texas healthcare network and strengthen our medical supply chain."

### STATE OF TEXAS PROPOSITION NO. 11

"The constitutional amendment authorizing the legislature to permit conservation and reclamation districts in El Paso County to issue bonds

supported by ad valorem taxes to fund the development and maintenance of parks and recreational facilities."

STATE OF TEXAS PROPOSITION NO. 12

"The constitutional amendment providing for the abolition of the office of county treasurer in Galveston County."

STATE OF TEXAS PROPOSITION NO. 13

"The constitutional amendment to increase the mandatory age of retirement for state justices and judges."

STATE OF TEXAS PROPOSITION NO. 14

"The constitutional amendment providing for the creation of the centennial parks conservation fund to be used for the creation and improvement of state parks."

The secretary of state shall take notice of this proclamation and shall immediately mail a copy of this order to every county judge of this state, and all appropriate writs will be issued, and all proper proceedings will be followed, to the end that said election may be held and its result proclaimed in accordance with law.

IN TESTIMONY WHEREOF, I have hereto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 9th day of August, 2023.

Greg Abbott, Governor

TRD-202302936



Proclamation 41-4069

**TO ALL TO WHOM THESE PRESENTS SHALL COME:**

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, do hereby certify that wildfires that began on July 24, 2023, pose an imminent threat of widespread or severe damage, injury, or loss of life or property in Anderson, Andrews, Angelina, Aransas, Archer, Atascosa, Austin, Bailey, Bandera, Bastrop, Baylor, Bell, Bexar, Blanco, Borden, Bosque, Brazos, Brewster, Briscoe, Brooks, Brown, Burlson, Burnet, Caldwell, Calhoun, Callahan, Cameron, Cass, Castro, Chambers, Cherokee, Clay, Cochran, Coke, Coleman, Colorado, Comal, Comanche, Concho, Cooke, Coryell, Crockett, Crosby, Culberson, Dallas, Denton, DeWitt, Dimmit, Duval, Eastland, Ector, Edwards, El Paso, Ellis, Erath, Falls, Fannin, Fayette, Fort Bend, Freestone, Frio, Gaines, Galveston, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gregg, Grimes, Guadalupe, Hale, Hamilton, Hardeman, Hardin, Harris, Harrison, Hays, Henderson, Hidalgo, Hill,

Hood, Houston, Howard, Hudspeth, Hunt, Jack, Jackson, Jasper, Jeff Davis, Jefferson, Jim Hogg, Jim Wells, Johnson, Karnes, Kaufman, Kendall, Kenedy, Kerr, Kimble, King, Kleberg, Knox, La Salle, Lamb, Lampasas, Lavaca, Lee, Leon, Liberty, Limestone, Llano, Madison, Marion, Martin, Mason, Matagorda, Maverick, McCulloch, McLennan, Medina, Menard, Midland, Milam, Mills, Mitchell, Montague, Montgomery, Nacogdoches, Navarro, Newton, Nolan, Nueces, Orange, Palo Pinto, Panola, Parker, Polk, Potter, Presidio, Randall, Reagan, Real, Red River, Reeves, Refugio, Robertson, Rockwall, Runnels, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, San Saba, Schleicher, Scurry, Shackelford, Shelby, Smith, Somervell, Starr, Stephens, Tarrant, Taylor, Terrell, Throckmorton, Tom Green, Travis, Trinity, Tyler, Upshur, Upton, Val Verde, Van Zandt, Victoria, Walker, Waller, Ward, Washington, Wharton, Wichita, Wilbarger, Williamson, Wilson, Winkler, Wise, Yoakum, Young, Zapata, and Zavala Counties;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in the previously listed counties based on the existence of such threat.

Pursuant to Section 418.017 of the Texas Government Code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the Texas Government Code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 11th day of August, 2023.

Greg Abbott, Governor

TRD-202302952





# EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

## TITLE 22. EXAMINING BOARDS

### PART 23. TEXAS REAL ESTATE COMMISSION

#### CHAPTER 531. CANONS OF PROFESSIONAL ETHICS AND CONDUCT

##### 22 TAC §531.18

The Texas Real Estate Commission (TREC) adopts on an emergency basis amendments to 22 TAC §531.18, Consumer Information, in Chapter 531, Canons of Professional Ethics and Conduct.

The amendments are adopted on an emergency basis to implement statutory changes enacted by the 88th Legislature in HB 1363, which becomes effective September 1, 2023, and which eliminates the real estate inspection recovery fund. As a result, references to that fund are removed from the Consumer Protection Notice form adopted by reference and the version number in the rule is updated.

The identical rule is also being proposed under §2001.023 and §2001.029, Texas Government Code.

The amendments are adopted on an emergency basis under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. The amendments are also adopted on an emergency basis under §1101.202, which requires the Commission to prescribe a notice containing the name, mailing address, and telephone number of the Commission for the purpose of directing a complaint to the commission; and establish methods by which consumers and service recipients are provided the notice by a person regulated under Chapter 1101 or 1102.

The statutes affected by these amendments adopted on an emergency basis are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the emergency amendments.

##### §531.18. Consumer Information.

(a) The Commission adopts by reference the Consumer Protection Notice, TREC No. CN 1-5 [~~CN 1-4~~]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, [www.trec.texas.gov](http://www.trec.texas.gov).

(b) Each license holder shall provide the notice adopted under subsection (a) by:

(1) displaying it in a readily noticeable location in each place of business the broker maintains; and

(2) providing a link to it in a readily noticeable place on the homepage of each business website, labeled:

(A) "Texas Real Estate Commission Consumer Protection Notice", in at least 10 point font; or

(B) "TREC Consumer Protection Notice", in at least 12 point font.

(c) For purposes of this section, business website means a website on the internet that:

(1) is accessible to the public;

(2) contains information about a license holder's real estate brokerage services; and

(3) the content of the website is controlled by the license holder.

(d) For purposes of providing the link required under subsection (b)(2) on a social media platform, the link may be located on:

(1) the account holder profile; or

(2) a separate page or website through a direct link from the social media platform or account holder profile.

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

Filed with the Office of the Secretary of State on August 9, 2023.

TRD-202302885

Vanessa E. Burgess

General Counsel

Texas Real Estate Commission

Effective date: September 1, 2023

Expiration date: December 29, 2023

For further information, please call: (512) 936-3284



#### CHAPTER 535. GENERAL PROVISIONS SUBCHAPTER E. REQUIREMENTS FOR LICENSURE

##### 22 TAC §535.58

The Texas Real Estate Commission (TREC) adopts on an emergency basis amendments to 22 TAC §535.58, License for Military Service Members, Veterans, or Military Spouses, in Chapter 535, General Provisions.

The amendments are adopted on an emergency basis, in part, to implement statutory changes enacted by the 88th Legislature in SB 422, becomes effective September 1, 2023, and which modifies the time period within which issuance of a license after

certain conditions are satisfied, from "as soon as practicable" to no later than 30 days. The amendments reflect this statutory change.

Section 535.58 is also being proposed under §2001.023 and §2001.029, Texas Government Code, with some additional changes.

The amendments are adopted on an emergency basis under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. The amendments are also adopted on an emergency basis under §55.005, which requires expedited licenses for military service members, military veterans, and military spouse.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

§535.58. *License for Military Service Members, Veterans, or Military Spouses.*

(a) Definitions.

(1) "Military service member" means a person who is on current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, as defined by §437.001, Government Code, or similar military service of another state.

(2) "Military spouse" means a person who is married to a military service member.

(3) "Veteran" means a person who has served as a military service member and who was discharged or released from active duty.

(b) Except as otherwise provide by this section:

(1) a person applying for a sales agent or broker license under this chapter must comply with all requirements of §535.51 of this chapter (relating to General Requirements for a Real Estate License); and

(2) a person applying for an inspector license under this chapter must comply with all requirements of §535.208 of this chapter (relating to Application for a License).

(c) Expedited application.

(1) The Commission shall process a license for an applicant who is a military service member, military veteran, or military spouse on an expedited basis.

(2) If the applicant holds a current certificate or license issued by a country, territory, or state other than Texas that has licensing requirements that are substantially equivalent to the requirements for the certificate or license issued in Texas, the Commission shall issue the license not later than the 30th day [as soon as practicable] after receipt of the application.

(d) Waiver of fees and requirements.

(1) The Commission shall waive application and examination fees for an applicant who is a:

(A) military service member or veteran whose military service, training, or education substantially meets all of the requirements for a license; or

(B) military service member, veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the same license in this state.

(2) The Executive Director may waive any other requirements for obtaining a license for an applicant who:

(A) meets the requirements of subsection (c)(2) of this section; or

(B) held a license in Texas within the five years preceding the date the application is filed with the Commission.

(e) Credit for military service.

(1) For an applicant who is a military service member or veteran, the Commission shall credit any verifiable military service, training or education obtained by an applicant that is relevant to a license toward the requirements of a license.

(2) This subsection does not apply to an applicant who holds a restricted license issued by another jurisdiction.

(f) Alternate methods of competency. The Commission may accept alternative methods for demonstrating an applicant's competency in the place of passing the specific licensing examination, or completing education and/or experience required to obtain a particular license. Based on the applicant's circumstances and the requirements of a particular license, the Commission may consider any combination of the following as alternative methods of demonstrating competency:

- (1) education;
- (2) continuing education;
- (3) examinations (written and/or practical);
- (4) letters of good standing;
- (5) letters of recommendation;
- (6) work experience; or
- (7) other methods required by the Executive Director.

(g) Limited reciprocity for military spouses.

(1) A person who is a military spouse who holds a current certificate or license issued by a country, territory, or state other than Texas that has licensing requirements that are substantially equivalent to the requirements for the certificate or license issued in Texas who wants to practice in Texas in accordance with §55.0041, Occupations Code, must:

(A) notify the Commission of the person's intent to practice in Texas on a form approved by the Commission; and

(B) submit a copy of the military identification card issued to the person; and

(2) Upon receipt of the documents required under paragraph (1) of this subsection, the Commission will:

(A) verify that the person is currently licensed and in good standing by another jurisdiction with substantially equivalent licensing requirements to Texas; and

(B) upon confirmation from the other jurisdiction that the person is currently licensed and in good standing with that jurisdiction, issue a license to the person for the same period in which the person is licensed or certified by the other jurisdiction.

(3) A person may not practice in Texas in accordance with this subsection without receiving confirmation from the Commission

that the Commission has verified that the person is currently licensed and in good standing with another jurisdiction. Confirmation is provided by the Commission when the person is issued a license as provided for in paragraph (2) of this subsection.

(4) A license issued under this subsection may not be renewed.

(5) After expiration of the initial license, if a person wants to continue to practice in accordance with this subsection, it is the responsibility of the person to seek confirmation from Commission that the person continues to meet the requirements to practice under this subsection by submitting a form approved by the Commission certifying that:

(A) the person is still currently licensed and in good standing with another jurisdiction with substantially equivalent licensure requirements to Texas; and

(B) the person's spouse is still stationed at a military installation in this state.

(6) Upon verification by Commission that the person still meets the requirements under this subsection, the Commission will issue another license for the same period in which the person is currently licensed or certified by the other jurisdiction.

(7) The time period for which a person may practice under this subsection without meeting the requirements for licensure in Texas is limited to the lesser of:

(A) the period during which the person's spouse is stationed at a military installation in this state; or

(B) three years.

(8) A person authorized to practice in this state under this subsection must comply will all other laws and regulations applicable to the license, including any sponsorship requirements.

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

Filed with the Office of the Secretary of State on August 9, 2023.

TRD-202302886

Vanessa E. Burgess

General Counsel

Texas Real Estate Commission

Effective date: September 1, 2023

Expiration date: December 29, 2023

For further information, please call: (512) 936-3284



## SUBCHAPTER R. REAL ESTATE INSPECTORS

### 22 TAC §535.210, §535.219

The Texas Real Estate Commission (TREC) adopts on an emergency basis amendments to 22 TAC §535.210, Fees, and §535.219, Schedule of Administrative Penalties, in Chapter 535, General Provisions.

The amendments are adopted on an emergency basis to implement statutory changes enacted by the 88th Legislature in HB 1363, which becomes effective September 1, 2023, and which eliminates the real estate inspection recovery fund. The changes

to 535.210 reflect the fact that for applications submitted as of September 1, 2023, the \$10 fee will no longer be required. The changes to §535.219 replace a repealed statutory section with a related rule 22 TAC §535.220(g) (although related, this rule is authorized by another statutory provision).

The identical rules are also being proposed under §2001.023 and §2001.029, Texas Government Code.

The amendments are adopted on an emergency basis under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. The amendments are also adopted on an emergency basis under Texas Occupations Code, §1102.403, which allows the Commission to impose an administrative penalty as provided by Subchapter O, Chapter 1101 pursuant to that section.

The statute affected by these amendments adopted on an emergency basis is Texas Occupations Code, Chapter 1102. No other statute, code or article is affected by the emergency amendments.

### §535.210. Fees.

(a) The Commission shall charge and collect the following fees:

(1) a fee of \$60 for filing an original or reinstatement application for a license as an apprentice inspector;

(2) a fee of \$100 for filing an original or reinstatement application for a license as a real estate inspector, which includes a fee for transcript evaluation;

(3) a fee of \$120 for filing an original or reinstatement application for a license as a professional inspector, which includes a fee for transcript evaluation;

(4) a fee of \$30 for the timely renewal of the license of an apprentice inspector;

(5) a fee of \$50 for the timely renewal of the license of a real estate inspector;

(6) a fee of \$60 for the timely renewal of the license of a professional inspector;

(7) a fee equal to 1-1/2 times the timely renewal fee for the late renewal of a license within 90 days of expiration;

(8) a fee equal to two times the timely renewal fee for the late renewal of a license more than 90 days but less than six months after expiration;

(9) a fee for taking a license examination consisting of a national portion and a state portion or retaking the national part of the license examination;

(10) a fee for taking a license examination without a national portion or retaking the state part of the license examination;

(11) a fee of \$50 to request an inactive professional inspector license be returned to active status;

(12) a fee of \$50 for the filing of a fitness determination;

(13) the fee required by the Department of Information Resources as a subscription or convenience fee for use of an online payment system;

(14) a fee of \$400 for filing an application for accreditation of a qualifying inspector education program for a period of four years;

(15) after initial approval of accreditation, a fee of \$200 a year for operation of a qualifying inspector education program;

(16) a fee of \$50 plus the following fees per classroom hour approved by the Commission for each qualifying inspector education course for a period of four years:

(A) \$5 for content and examination review;

(B) \$5 for classroom delivery design and presentation review; and

(C) \$10 for distance education delivery design and presentation review.

(17) a fee of \$400 for filing an application for accreditation as a continuing inspector education provider for a period of two years;

(18) a fee of \$50 plus the following fees per classroom hour approved by the Commission for each continuing inspector education course for a period of two years:

(A) \$2.50 for content and examination review;

(B) \$2.50 for classroom delivery design and presentation review; and

(C) \$5 for distance education delivery design and presentation review.

(19) the fee required under paragraphs (16)(C) and (18)(C) of this subsection will be waived if the course has already been certified by a distance learning certification center acceptable to the Commission;[-]

(20) for an applicant who submits an application prior to September 1, 2023, a fee of \$10 for deposit in the Real Estate Inspection Recovery Fund upon an applicant's successful completion of an examination; and

(21) the fee charged by the Federal Bureau of Investigation and Texas Department of Public Safety for fingerprinting or other service for a national or state criminal history check in connection with a license application.

(b) Fees established by this section must be paid when an application is filed and are not refundable once an application has been accepted for filing.

(c) If the Commission receives an application that requires payment of a fee, and a sufficient fee was not submitted with the application, the Commission will return the application and notify the person filing the application that the person must pay the fee before the application will be processed.

(d) If a payment to the Commission by or on behalf of a license holder or applicant is dishonored or reversed by a bank or other financial institution, the Commission shall send a request for payment of the dishonored or reversed payment by certified mail to the last known mailing address of the license holder or applicant as shown in the records of the Commission. If the Commission has sent a request for payment in accordance with the provisions of this section, and the license holder or applicant fails to make good on the payment in the form of a cashier's check, money order, or credit card payment within 30 days after the Commission has mailed the request, the license will be placed on inactive status.

(e) Placing a license on inactive status under this section does not preclude the Commission from proceeding under §1101.652(a)(3), Texas Occupations Code, against a license holder who has failed to

make good a payment issued to the Commission within a reasonable time.

§535.219. *Schedule of Administrative Penalties.*

(a) The Commission may suspend or revoke a license or take other disciplinary action authorized by Chapter 1102 in addition to or instead of assessing the administrative penalties set forth in this section.

(b) The administrative penalties set forth in this section consider the criteria listed in §1101.702(b) of the Act.

(c) An administrative penalty range of \$100 - \$1,500 per violation per day may be assessed for violations of the following sections of Chapter 1101, Chapter 1102 and this subchapter:

(1) §1101.652(a)(8);

(2) §1102.118;

(3) §1102.305;

~~(4) §1102.364;~~ }

~~(4) [(5)] 22 TAC §535.216(c);~~

~~(5) [(6)] 22 TAC §535.217;~~

~~(6) [(7)] 22 TAC §535.220(a) - (d) and (g);~~

~~(7) [(8)] 22 TAC §535.221; and~~

~~(8) [(9)] 22 TAC §535.223.~~

(d) An administrative penalty range of \$500 - \$3,000 per violation per day may be assessed for violations of the following sections of Chapter 1101, Chapter 1102 and this subchapter:

(1) §§1101.652(a)(3) - (4);

(2) §1102.301;

(3) 22 TAC §535.222;

(4) 22 TAC §535.226(d) - (e); and

(5) 22 TAC §§535.227 - 535.233.

(e) An administrative penalty of \$1,000 - \$5,000 per violation per day may be assessed for violations of the following sections of Chapter 1101, Chapter 1102 and this subchapter:

(1) §§1101.652(a)(2), (5) - (6);

(2) §1102.101;

(3) §1102.102;

(4) §1102.103;

(5) §1102.302;

(6) §1102.303;

(7) §1102.304;

(8) 22 TAC §535.208(e)(2);

(9) 22 TAC §535.211;

(10) 22 TAC §535.215;

(11) 22 TAC §535.220(e)(1), (3) - (7); and

(12) 22 TAC §535.224(b)(1) - (2).

(f) The Commission may assess an administrative penalty of up to two times that outlined under subsections (c), (d), and (e) of this section, subject to the maximum penalties authorized under §1101.702(a) of the Act, if a person has a history of previous violations.

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

Filed with the Office of the Secretary of State on August 9, 2023.

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Vanessa E. Burgess

General Counsel

Texas Real Estate Commission

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For further information, please call: (512) 936-3284



## CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

### 22 TAC §537.62

The Texas Real Estate Commission (TREC) adopts on an emergency basis amendments to 22 TAC §537.62, Standard Contract Form TREC No. OP-H, Seller's Disclosure Notice; in Chapter 537, Professional Agreements and Standard Contracts. Texas real estate license holders are generally required to use forms promulgated by TREC when negotiating contacts for the sale of real property, although some forms--like the Seller's Disclosure Notice--are adopted by the Commission for voluntary use by license holders. Contract forms are drafted and recommended for proposal by the Texas Real Estate Broker-Lawyer Committee, an advisory body consisting of six attorneys appointed by the President of the State Bar of Texas, six brokers appointed by TREC, and one public member appointed by the governor. The Texas Real Estate Broker-Lawyer Committee recommended revisions to the contract forms adopted by reference under the amendments adopted on an emergency basis to Chapter 537 to comply with statutory changes enacted by the 88th Legislature in HB 697.

The Seller's Disclosure Notice is updated to comply with the requirements of HB 697, which becomes effective September 1, 2023, and which add a disclosure related to fuel gas piping to the statutorily-required notice.

The identical rule is also being proposed under §2001.023 and §2001.029, Texas Government Code.

The amendments are adopted on an emergency basis under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. The amendments are also adopted on an emergency basis under Texas Occupations Code §1101.155, which allows the Commission to adopt rules in the public's best interest that require license holders to use contract forms prepared by the Broker-Lawyer Committee and adopted by the Commission.

The statute affected by these amendments adopted on an emergency basis is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the emergency amendments.

*§537.62. Standard Contract Form TREC No. 55-0 [OP-H], Seller's Disclosure Notice.*

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 55-0 [OP-H] approved by the Commission in 2023 [2019] for voluntary use to fulfill the disclosure requirements of Texas Property Code § 5.008.

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

Filed with the Office of the Secretary of State on August 9, 2023.

TRD-202302888

Vanessa E. Burgess

General Counsel

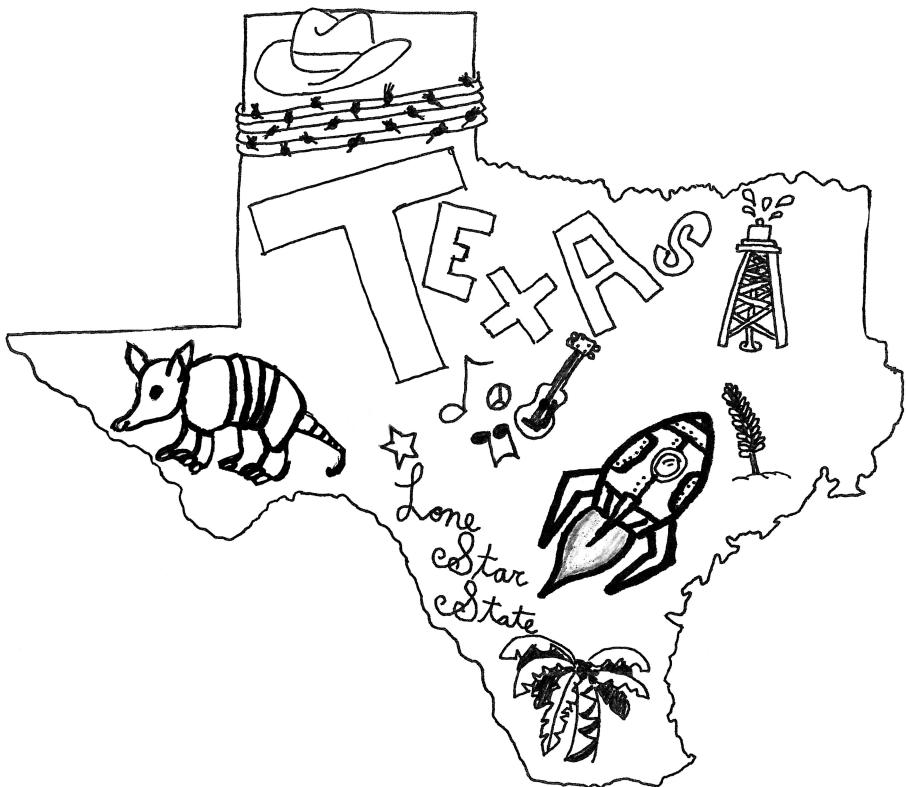
Texas Real Estate Commission

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Expiration date: December 29, 2023

For further information, please call: (512) 936-3284





# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

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

## TITLE 22. EXAMINING BOARDS

### PART 23. TEXAS REAL ESTATE COMMISSION

#### CHAPTER 531. CANONS OF PROFESSIONAL ETHICS AND CONDUCT

##### 22 TAC §531.18

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §531.18, Consumer Information, in Chapter 531, Canons of Professional Ethics and Conduct.

The amendments to 22 TAC §531.18 are proposed to reflect statutory changes enacted by the 88th Legislature in HB 1363, which eliminated the real estate inspection recovery fund. As a result, references to that fund are removed from the Consumer Protection Notice form adopted by reference and the version number in the rule is updated.

Vanessa E. Burgess, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Burgess also has determined that for each year of the first five years the section as proposed is in effect, the public benefit anticipated as a result of enforcing the section will be greater clarity in the rules and consistency with the applicable statutory requirements.

For each year of the first five years the proposed amendments are in effect the amendments will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation;

-increase or decrease the number of individuals subject to the rule's applicability; or

-positively or adversely affect the state's economy.

Comments on the proposal may be submitted through the online comment submission form at <https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules>, to Vanessa E. Burgess, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to [general.counsel@trec.texas.gov](mailto:general.counsel@trec.texas.gov). The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151 and §1101.202. Section 1101.151 authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. Section 1101.202 requires the Commission to prescribe a notice containing the name, mailing address, and telephone number of the Commission for the purpose of directing a complaint to the commission; and establish methods by which consumers and service recipients are provided the notice by a person regulated under Chapter 1101 or 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

##### §531.18. *Consumer Information.*

(a) The Commission adopts by reference the Consumer Protection Notice, TREC No. CN 1-5 [~~CN 1-4~~]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, [www.trec.texas.gov](http://www.trec.texas.gov).

(b) Each license holder shall provide the notice adopted under subsection (a) by:

(1) displaying it in a readily noticeable location in each place of business the broker maintains; and

(2) providing a link to it in a readily noticeable place on the homepage of each business website, labeled:

(A) "Texas Real Estate Commission Consumer Protection Notice", in at least 10 point font; or

(B) "TREC Consumer Protection Notice", in at least 12 point font.

(c) For purposes of this section, business website means a website on the internet that:

(1) is accessible to the public;

(2) contains information about a license holder's real estate brokerage services; and

(3) the content of the website is controlled by the license holder.

(d) For purposes of providing the link required under subsection (b)(2) on a social media platform, the link may be located on:

(1) the account holder profile; or

(2) a separate page or website through a direct link from the social media platform or account holder profile.

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

Filed with the Office of the Secretary of State on August 9, 2023.

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Vanessa E. Burgess

General Counsel

Texas Real Estate Commission

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For further information, please call: (512) 936-3284



## CHAPTER 535. GENERAL PROVISIONS

### SUBCHAPTER B. GENERAL PROVISIONS RELATING TO THE REQUIREMENTS OF LICENSURE

#### 22 TAC §535.4, §535.5

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.4, License Required, and §535.5, License Not Required, in Chapter 535, General Provisions.

The amendments are proposed to implement statutory changes enacted by the 88th Legislature in SB 1577, which become effective January 1, 2024. Currently, Chapter 1101, Occupations Code, requires business entities who receive compensation on behalf of a license holder to be licensed as a broker. SB 1577 allows certain entities-limited liability companies and s-corporations (as that term is defined by federal law)-to register with the Commission in lieu of obtaining a license. In order to be eligible for registration, these exempted entities must: (i) perform no acts of a broker, other than receiving said compensation on behalf of a license holder; and (ii) be at least 51 percent owned by the license holder on whose behalf the business entity receives compensation. The proposed rule changes reflect this statutory change.

Vanessa E. Burgess, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections.

There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Burgess also has determined that for each year of the first five years the section as proposed are in effect, the public benefit anticipated as a result of enforcing the section will be greater clarity in the rules and consistency with the applicable statutory requirements.

Except as noted below, for each year of the first five years the proposed amendments are in effect, the amendments will not:

-create or eliminate a government program;

-require the creation of new employee positions or the elimination of existing employee positions;

-require an increase or decrease in future legislative appropriations to the agency;

-require an increase or decrease in fees paid to the agency;

-create a new regulation;

-expand, limit or repeal an existing regulation;

-increase or decrease the number of individuals subject to the rule's applicability; or

-positively or adversely affect the state's economy.

SB 1577 limits an existing regulation by exempting certain business entities from licensure requirements as detailed above. By doing so, it decreases the number of individual license holders who must obtain licenses on behalf of these entities. However, the licensure requirement is replaced with a registration requirement.

Comments on the proposal may be submitted through the online comment submission form at <https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules>, to Vanessa Burgess, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to [general.counsel@trec.texas.gov](mailto:general.counsel@trec.texas.gov). The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151 and §1101.355, as that section is amended by SB 1577. Section 1101.151 authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. Section 1101.355, as amended by SB 1577, requires the Commission to adopt rules providing for the registration of an exempted business entity.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

#### §535.4. License Required.

(a) The Act applies to any person acting as a real estate broker or sales agent while physically within Texas, regardless of the location of the real estate involved or the residence of the person's customers or clients. For the purposes of the Act, a person conducting brokerage business from another state by mail, telephone, the Internet, email, or other medium is acting within Texas if the real property concerned is located wholly or partly in Texas.

(b) This section does not prohibit cooperative arrangements between foreign brokers and Texas brokers pursuant to §1101.651(a)(2) of the Act and §535.131 of this chapter (relating to Unlawful Conduct; Splitting Fees).



(c) Unless otherwise exempted by the Act, a person must be licensed as a broker or sales agent to show a property. For purposes of this section, to "show" a property includes causing or permitting the property to be viewed by a prospective buyer or tenant, unlocking or providing access onto or into a property for a prospective buyer or tenant, and hosting an open house at the property.

(d) A license holder may permit a prospective tenant unescorted access to view a property available for rent or lease only if:

(1) the property is vacant, meaning no person lives at, and no personal property except property intended to remain or convey is stored at, the property;

(2) the license holder employs a method to control access and verify the identity of the prospective tenant; and

(3) the property owner has signed a written consent that sets out in bold print in at least 12-point font that:

(A) the property owner is aware that unescorted access may occur; and

(B) specifies whether the broker enabling unescorted access or the property owner will be responsible for any damage that results from such unescorted access.

(e) The employees, agents, or associates of a licensed broker must be licensed as brokers or sales agents if they direct or supervise other persons who perform acts for which a license is required.

(f) A real estate license is required for a person to solicit listings or to negotiate in Texas for listings.

(g) Unless otherwise exempted by §535.5 of this chapter (relating to License Not Required) and §1101.355(d) of the Act, a [A] business entity owned by a broker or sales agent which receives compensation on behalf of the license holder must be licensed as a broker under the Act.

(h) A person controls the acceptance or deposit of rent from a resident of a single-family residential real property unit and must be licensed under the Act if the person has the authority to:

(1) use the rent to pay for services related to management of the property;

(2) determine where to deposit the rent; or

(3) sign checks or withdraw money from a trust account.

(i) For purposes of subsection (h) of this section, a single-family residential real property unit includes a single-family home or a unit in a condominium, co-operative, row-home, or townhome. The term does not include a duplex, triplex, or four-plex unless the units are owned as a condominium, cooperative, row-home, or townhome.

(j) A person must be licensed as a broker to operate a rental agency.

(k) A real estate license is required of a subsidiary corporation, which, for compensation, negotiates in Texas for the sale, purchase, rent, or lease of its parent corporation's real property.

(l) A person who arranges for a tenant to occupy a residential property must have a real estate license if the person:

(1) does not own the property or lease the property from its owner;

(2) receives valuable consideration; and

(3) is not exempt under the Act.

(m) A real estate license is required for a person to receive a fee or other consideration for assisting another person to locate real property for sale, purchase, rent, or lease, including the operation of a service which finds apartments or homes.

(n) The compilation and distribution of information relating to rental vacancies or property for sale, purchase, rent, or lease is activity for which a real estate license is required if payment of any fee or other consideration received by the person who compiles and distributes the information is contingent upon the sale, purchase, rental, or lease of the property. An advance fee is a contingent fee if the fee must be returned if the property is not sold, purchased, rented, or leased.

(o) A person must be licensed as a broker or sales agent if, for compensation, the person:

(1) advertises for others regarding the sale, purchase, rent, or lease of real property;

(2) accepts inquiries received in response to such advertisements; and

(3) refers the inquiry to the owner of the property.

#### §535.5. *License Not Required.*

(a) Acting as a principal, a person may purchase, sell, lease, or sublease real estate for profit without being licensed as a broker or sales agent.

(b) A person who owns property jointly may sell and convey title to his or her interest in the property, but to act for compensation or with the expectation of compensation as an agent for the other owner, the person must be licensed unless otherwise exempted by the Act.

(c) A real estate license is not required for an individual employed by a business entity for the purpose of buying, selling, or leasing real property for the entity. An entity is considered to be an owner if it holds record title to the property or has an equitable title or right acquired by contract with the record title holder. An individual employed by a business entity means a person employed and directly compensated by the business entity. An independent contractor is not an employee.

(d) Trade associations or other organizations that provide an electronic listing service for their members, but do not receive compensation when the real estate is sold, are not required to be licensed under the Act.

(e) Auctioneers are not required to be licensed under the Act when auctioning real property for sale. However, a licensed auctioneer may not show the real property, prepare offers, or negotiate contracts unless the auctioneer is also licensed under the Act.

(f) An answering service or clerical or administrative employees identified to callers as such to confirm information concerning the size, price, and terms of property advertised are not required to be licensed under the Act.

(g) A business entity which receives compensation on behalf of a license holder that is earned by the license holder while engaged in real estate brokerage is not required to be licensed by the Commission if the business entity:

(1) performs no other acts of a broker;

(2) is:

(A) a limited liability company as defined by §101.001, Business Organizations Code; or

(B) an S corporation as defined by 26 U.S.C. Section 1361;

(3) is at least 51 percent owned by the license holder on whose behalf the business entity receives compensation; and

(4) is registered with the Commission as provided by §535.35 of this chapter (relating to Registration of Certain Business Entities).

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

Filed with the Office of the Secretary of State on August 9, 2023.

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Vanessa E. Burgess

General Counsel

Texas Real Estate Commission

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For further information, please call: (512) 936-3284



## 22 TAC §535.6

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.6, Equitable Interests in Real Property, in Chapter 535, General Provisions.

Currently, a person may engage in "wholesaling"--that is, the practice of acquiring an option or entering into a contract to purchase real property and then selling or assigning the interest in the contract to another--without a real estate license, as long as certain disclosures are made to the buyer of the interest.

The amendments are proposed to implement statutory changes enacted by the 88th Legislature in SB 1577, which requires first, that disclosure also be made to the original seller, and second, that the disclosures be in writing. Subsection (c) is being removed to more closely align with the statutory language. Finally, a non-substantive change is made for consistency throughout the chapter.

Vanessa E. Burgess, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections.

There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Burgess also has determined that for each year of the first five years the section as proposed are in effect, the public benefit anticipated as a result of enforcing the section will be greater clarity in the rules and consistency with the applicable statutory requirements.

Except as noted below, for each year of the first five years the proposed amendments are in effect the amendments will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;

-require an increase or decrease in future legislative appropriations to the agency;

-require an increase or decrease in fees paid to the agency;

-create a new regulation;

-expand, limit or repeal an existing regulation;

-increase or decrease the number of individuals subject to the rule's applicability; or

-positively or adversely affect the state's economy.

SB 1577 expands an existing regulation by requiring disclosure to sellers and that the disclosure be in writing.

Comments on the proposal may be submitted through the online comment submission form at <https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules>, to Vanessa Burgess, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to [general.counsel@trec.texas.gov](mailto:general.counsel@trec.texas.gov). The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. The amendments are also proposed under §1101.0045, Texas Occupations Code, which establishes the statutory basis for the rule.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

### §535.6. *Equitable Interests in Real Property.*

(a) A person may acquire an option or enter into a contract to purchase real property and then sell or offer to sell the option or assign or offer to assign the interest in the contract without having a real estate license if the person:

(1) does not use the option or contract to purchase to engage in real estate brokerage; and

(2) discloses in writing the nature of the [their] equitable interest to any seller or potential buyer.

(b) A person selling or offering to sell an option or assigning or offering to assign an interest in a contract to purchase real property without disclosing the nature of that interest as provided by subsection (a) of this section [to a potential buyer] is engaging in real estate brokerage.

~~(c) A license holder who is engaging in real estate brokerage by selling or buying or offering to sell or buy an option or assigning or offering to assign an interest in a contract to purchase real property must disclose to any potential seller or buyer that the principal is selling or buying an option or assigning an interest in a contract and does not have legal title to the real property.]~~

~~(c) [(4)] A license holder acting on his or her own behalf or in a capacity described by §535.144(a) of this chapter (relating to When Acquiring or Disposing of Own Property or Property of Spouse, Parent or Child) who is selling an option or assigning an interest in a contract to purchase real property must disclose in writing to any seller or potential buyer that the license holder is selling an option or assigning an interest in a contract and that the license holder does not have legal title to the real property.~~

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

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Vanessa E. Burgess

General Counsel

Texas Real Estate Commission

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For further information, please call: (512) 936-3284



## SUBCHAPTER C. EXEMPTIONS TO REQUIREMENTS OF LICENSURE

### 22 TAC §535.35

The Texas Real Estate Commission (TREC) proposes new 22 TAC §535.35, Registration of Certain Business Entities, in Chapter 535, General Provisions.

New §535.35 is proposed to implement statutory changes enacted by the 88th Legislature in SB 1577, which becomes effective January 1, 2024. Currently, §1101.355(c), Occupations Code, requires business entities who receive compensation on behalf of a license holder to be licensed as a broker. Licensure requires certain conditions be satisfied, including, for instance, that the entity have a designated broker and payment of an initial license application fee of \$150 and a subsequent \$72 application fee to renew. SB 1577 amends §1101.355 by allowing certain entities-limited liability companies and s-corporations (as that term is defined by federal law)-to register with the Commission in lieu of obtaining a license and requires the Commission to adopt rules providing for this registration. The proposed new rule outlines the requirements these exempt business entities must follow to register the business entity with the Commission. The proposed changes also provide a term for the registration once issued, as well as an obligation to certify continuing compliance. Additionally, SB 1577 also amends §1101.152, Occupations Code, which specifically directs the Commission to adopt a rule to charge and collect fees in amounts reasonable and necessary to cover the costs of registering a business entity. Therefore, the changes set forth the fee obligations for such registration and certification of continued compliance. Finally, under the proposal, a license holder must also notify the Commission in writing not later than the 10th day after the date the business entity no longer qualifies for the exemption.

Vanessa E. Burgess, General Counsel, has determined that for the first five-year period the proposed new rule is in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed new rule. There is no significant economic cost anticipated for persons who are required to comply with the proposed new rule. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Burgess also has determined that for each year of the first five years the section as proposed is in effect, the public benefit

anticipated as a result of enforcing the new rule will be greater clarity in the rules and consistency with the applicable statutory requirements.

Except as noted below, for each year of the first five years the proposed new rule is in effect the new rule will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability; or
- positively or adversely affect the state's economy.

The proposed changes limit an existing regulation by exempting certain business entities from licensure requirements as detailed above. By doing so, it decreases the number of individual license holders who must obtain licenses on behalf of these entities. However, the licensure requirement is replaced with a registration requirement and decreased associated fees paid to the agency. Section 1101.152, as amended by SB 1577, also requires the Commission to charge and collect reasonable and necessary fees to cover the costs of the registration of certain business entities. However, entities that will ultimately be eligible for registration as of January 1, 2024, must currently be licensed and pay the fees for such licensure, including a \$150 initial application fee. Licensure also requires renewal and with that, a new set of fees, including a \$72 renewal fee. Therefore, while this creates new fees associated with registration and certification of compliance, these fees are lower than what individuals would be required to pay to obtain an original license and renew that license.

Comments on the proposal may be submitted through the online comment submission form at <https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules>, to Vanessa E. Burgess, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to [general.counsel@trec.texas.gov](mailto:general.counsel@trec.texas.gov). The deadline for comments is 30 days after publication in the *Texas Register*.

The new rule is proposed under Texas Occupations Code, §1101.151 and §1101.355, as that section is amended by SB 1577. Section 1101.151 authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. Section 1101.355, as amended by SB 1577, requires the Commission to adopt rules providing for the registration of an exempted business entity.

The statutes affected by this proposal is Texas Occupations Code, Chapters 1101. No other statute, code or article is affected by the proposed new rule.

§535.35. Registration of Certain Business Entities.

(a) For purposes of this section, an "exempt business entity" means a business entity which is exempt from the requirements of being licensed under §535.5(g) of this chapter (relating to License Not Required) and §1101.355(d) of the Act.

(b) Before an exempt business entity may receive compensation on behalf of a license holder, the license holder must:

(1) register the business entity with the Commission on a form approved by the Commission;

(2) pay a \$140 fee to the Commission; and

(3) provide supporting documentation satisfactory to the Commission demonstrating the entity meets the requirements for exemption.

(c) Term of Registration; Certification.

(1) A registration issued under this section is valid for two years from the date of issuance.

(2) The Commission will deliver a notice regarding expiration of the registration to the license holder three months before the expiration of the registration.

(3) Failure to receive the notice from the Commission does not relieve a license holder from the requirements of this subsection.

(4) Prior to the expiration of the registration, a license holder must:

(A) certify on a form approved by the Commission that the exempt business entity continues to meet the requirements under this section;

(B) pay a \$70 fee to the Commission; and

(C) provide supporting documentation as provided in subsection (b)(3) of this section, if determined necessary by the Commission.

(5) Failure to timely certify will result in expiration of the registration and loss of the exemption under §535.5(g) of this chapter and §1101.355(d) of the Act.

(d) A license holder must notify the Commission not later than the 10th day after the date the business entity no longer satisfies the requirements of §535.5(g)(1)-(3) of this chapter and §1101.355(d) of the Act.

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

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## SUBCHAPTER E. REQUIREMENTS FOR LICENSURE

### 22 TAC §535.58

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.58, License for Military Service Members,

Veterans, or Military Spouses, in Chapter 535, General Provisions.

The amendments are proposed, in part, to implement statutory changes enacted by the 88th Legislature in SB 422, which first, expands out-of-state occupational license recognition to include military service members, as long as certain criteria are met. SB 422 also modifies the time period within which verification of good standing occurs, as well as issuance of a license after certain conditions are satisfied, from "as soon as practicable" to no later than 30 days. The bill also addresses the term of the license in situations of divorce or other events impacting the military spouse's status. The proposed rule amendments reflect these statutory changes.

In addition, as a result of education requirements being added for easement and right-of-way agents (ERWs) during the 87th Legislative Session, language is added making clear that ERW applicants must otherwise comply with the requirements in 22 TAC §535.400, unless excepted by §535.58. Additionally, language is being struck from the rule to better reflect the statutory framework under Chapter 55, Occupations Code. Finally, a statement of purpose is being added to the rule to make clear that this rule addresses the requirements provided under Chapter 55, Occupations Code, and not federal law.

Vanessa E. Burgess, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Burgess also has determined that for each year of the first five years the section as proposed are in effect, the public benefit anticipated as a result of enforcing the section will be greater clarity in the rules and consistency with the applicable statutory requirements.

Except as noted below, for each year of the first five years the proposed amendments are in effect the amendments will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability; or
- positively or adversely affect the state's economy.

The proposed changes will expand an existing regulation and will increase the number of individuals subject to the rule's applicability, as required by SB 422.

Comments on the proposal may be submitted through the online comment submission form at <https://www.trec.texas.gov/rules->

and-laws/comment-on-proposed-rules, to Vanessa Burgess, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to [general.counsel@trec.texas.gov](mailto:general.counsel@trec.texas.gov). The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. The amendments are also proposed under §55.0041, as amended by SB 422, which requires agencies to adopt rules for the recognition of out-of-state licenses for military service members and military spouses, and §55.005, which requires expedited licenses for military service members, military veterans, and military spouse.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

§535.58. *License for Military Service Members, Veterans, or Military Spouses.*

(a) Definitions.

(1) "Military service member" means a person who is on current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, as defined by §437.001, Government Code, or similar military service of another state.

(2) "Military spouse" means a person who is married to a military service member.

(3) "Veteran" means a person who has served as a military service member and who was discharged or released from active duty.

(b) Except as otherwise provide by this section:

(1) a person applying for a sales agent or broker license under this chapter must comply with all requirements of §535.51 of this chapter (relating to General Requirements for a Real Estate License); ~~and~~

(2) a person applying for an inspector license under this chapter must comply with all requirements of §535.208 of this chapter (relating to Application for a License); and

(3) a person applying for a certificate of registration under this chapter must comply with all requirements of §535.400 of this chapter (relating to Registration of Easement or Right-of-Way Agents).

(c) Expedited application.

(1) The Commission shall process a license for an applicant who is a military service member, military veteran, or military spouse on an expedited basis.

(2) If the applicant holds a current certificate or license issued by a country, territory, or state other than Texas that has licensing requirements that are substantially equivalent to the requirements for the certificate or license issued in Texas, the Commission shall issue the license not later than the 30th day [as soon as practicable] after receipt of the application.

(d) Waiver of fees and requirements.

(1) The Commission shall waive application and examination fees for an applicant who is a:

(A) military service member or veteran whose military service, training, or education substantially meets all of the requirements for a license; or

(B) military service member, veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the same license in this state.

(2) The Executive Director may waive any other requirements for obtaining a license for an applicant who:

(A) meets the requirements of subsection (c)(2) of this section; or

(B) held a license in Texas within the five years preceding the date the application is filed with the Commission.

(e) Credit for military service.

(1) For an applicant who is a military service member or veteran, the Commission shall credit any verifiable military service, training or education obtained by an applicant that is relevant to a license toward the requirements of a license.

(2) This subsection does not apply to an applicant who holds a restricted license issued by another jurisdiction.

(f) Alternate methods of competency. The Commission may accept alternative methods for demonstrating an applicant's competency in the place of passing the specific licensing examination, or completing education and/or experience required to obtain a particular license. Based on the applicant's circumstances and the requirements of a particular license, the Commission may consider any combination of the following as alternative methods of demonstrating competency:

(1) education;

(2) continuing education;

(3) examinations (written and/or practical);

(4) letters of good standing;

(5) letters of recommendation;

(6) work experience; or

(7) other methods required by the Executive Director.

(g) Limited reciprocity for military service members and military spouses.

(1) A person who is a military service member or military spouse who holds a current certificate or license issued by a country, territory, or state other than Texas that has licensing requirements that are substantially equivalent to the requirements for the certificate or license issued in Texas who wants to practice in Texas in accordance with §55.0041, Occupations Code, must:

(A) notify the Commission of the person's intent to practice in Texas on a form approved by the Commission; and

(B) submit a copy of the military identification card issued to the person; and

(2) Upon receipt of the documents required under paragraph (1) of this subsection, the Commission will:

(A) no later than 30 days, verify that the person is currently licensed and in good standing by another jurisdiction with substantially equivalent licensing requirements to Texas; and

## SUBCHAPTER N. SUSPENSION AND REVOCATION OF LICENSURE

### 22 TAC §535.147

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.147, Splitting Fee with Unlicensed Person, in Chapter 535, General Provisions.

The amendments are proposed to implement statutory changes enacted by the 88th Legislature in SB 1577, which become effective January 1, 2024. Currently, Chapter 1101, Occupations Code, requires business entities who receive compensation on behalf of a license holder to be licensed as a broker. SB 1577 allows certain entities--limited liability companies and s-corporations (as that term is defined by federal law)--to register with the Commission in lieu of obtaining a license. In order to be eligible for registration, these exempted entities must: (i) perform no acts of a broker, other than receiving said compensation on behalf of a license holder; and (ii) be at least 51 percent owned by the license holder on whose behalf the business entity receives compensation. The proposed rule changes reflect this statutory change.

Vanessa E. Burgess, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections.

There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Burgess also has determined that for each year of the first five years the section as proposed are in effect, the public benefit anticipated as a result of enforcing the section will be greater clarity in the rules and consistency with the applicable statutory requirements.

Excepted as noted below, for each year of the first five years the proposed amendments are in effect the amendments will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability; or
- positively or adversely affect the state's economy.

SB 1577 limits an existing regulation by exempting certain business entities from licensure requirements as detailed above. By doing so, it decreases the number of individual license holders who must obtain licenses on behalf of these entities. However, the licensure requirement is replaced with a registration requirement.

(B) upon confirmation from the other jurisdiction that the person is currently licensed and in good standing with that jurisdiction, issue a license to the person for the same period in which the person is licensed or certified by the other jurisdiction.

(3) A person may not practice in Texas in accordance with this subsection without receiving confirmation from the Commission that the Commission has verified that the person is currently licensed and in good standing with another jurisdiction. Confirmation is provided by the Commission when the person is issued a license as provided for in paragraph (2) of this subsection.

(4) A license issued under this subsection may not be renewed.

~~[(5) After expiration of the initial license, if a person wants to continue to practice in accordance with this subsection, it is the responsibility of the person to seek confirmation from Commission that the person continues to meet the requirements to practice under this subsection by submitting a form approved by the Commission certifying that:]~~

~~[(A) the person is still currently licensed and in good standing with another jurisdiction with substantially equivalent licensing requirements to Texas; and]~~

~~[(B) the person's spouse is still stationed at a military installation in this state.]~~

~~[(6) Upon verification by Commission that the person still meets the requirements under this subsection, the Commission will issue another license for the same period in which the person is currently licensed or certified by the other jurisdiction.]~~

(5) ~~[(7)]~~ The time period for which a person may practice under this subsection without meeting the requirements for licensure in Texas is limited to the lesser of:

(A) the period during which the person or person's spouse is stationed at a military installation in this state; or

(B) three years.

(6) ~~[(8)]~~ A person authorized to practice in this state under this subsection must comply will all other laws and regulations applicable to the license, including any sponsorship requirements.

(7) Notwithstanding paragraph (5) of this subsection, in the event of a divorce or similar event that affects a person's status as a military spouse, the spouse may continue to practice for three years from the date of the issuance of the license under this subsection.

(h) The purpose of this section is to establish procedures authorized or required by Texas Occupations Code, Chapter 55, and is not intended to modify or alter rights that may be provided under federal law.

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

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Comments on the proposal may be submitted through the online comment submission form at <https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules>, to Vanessa Burgess, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to [general.counsel@trec.texas.gov](mailto:general.counsel@trec.texas.gov). The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151 and §1101.355, as that section is amended by SB 1577. Section 1101.151 authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. Section 1101.355, as amended by SB 1577, requires the Commission to adopt rules providing for the registration of an exempted business entity.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.147. *Splitting Fee with Unlicensed Person.*

(a) Except as otherwise provided by the Act or Commission rules, a broker or sales agent may not share a commission or fees with any person who engages in acts for which a license is required and is not actively licensed as a broker or sales agent.

(b) An unlicensed person may share in the income earned by a business entity licensed as a broker or exempted from the licensing requirements under the Act if the person engages in no acts for which a license is required and does not lead the public to believe that the person is in the real estate brokerage business.

(c) A broker or sales agent may not share a commission or fees with an unlicensed business entity created by a license holder for the purpose of collecting a commission or fees on behalf of the license holder, unless the entity is exempted from the requirements of licensure as provided by §535.5 of this chapter (relating to License Not Required) and §1101.355(d) of the Act.

(d) A license holder may rebate or pay a portion of the license holder's fee or commission to a party in the transaction when the sales agent has the written consent of the sales agent's sponsoring broker and the party represented by the license holder. A commission or fee may not be paid to any party to the transaction in a manner that misleads a broker, lender, title company, or governmental agency regarding the real estate transaction or the financial resources or obligations of the buyer. A license holder who intends to pay a portion of the license holder's fee or commission to a party the license holder does not represent must obtain the written consent of the party represented by the license holder before making the payment.

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

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## SUBCHAPTER Q. ADMINISTRATIVE PENALTIES

### 22 TAC §535.191

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.191, Schedule of Administrative Penalties, in Chapter 535, General Provisions.

The amendments are proposed to address a violation of 22 TAC §535.157 (relating to Obligation to Respond Timely), which was recently adopted by the Commission. Current rule 535.157 obligates a broker and sales agent to respond to his or her principal, a broker or sales agent representing another party to a real estate transaction, or an unrepresented party of a real estate transaction within two calendar days. Under the proposed changes to §535.191, a violation of §535.157 could result in an administrative penalty of \$100 - \$1,500 per violation per day.

This proposed change is recommended by the Commission's Enforcement Committee.

Vanessa E. Burgess, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections.

There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Burgess also has determined that for each year of the first five years the section as proposed are in effect, the public benefit anticipated as a result of enforcing the section will be greater clarity and consistency in the rules, as well as greater consumer protection.

For each year of the first five years the proposed amendments are in effect the amendments will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability; or
- positively or adversely affect the state's economy.

Comments on the proposal may be submitted through the online comment submission form at <https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules>, to Vanessa Burgess, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to [general.counsel@trec.texas.gov](mailto:general.counsel@trec.texas.gov). The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. The amendments are also proposed under Texas Occupations Code, §1101.702, which requires the Commission adopt by rule a schedule of administrative penalties.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.191. *Schedule of Administrative Penalties.*

(a) The Commission may suspend or revoke a license or take other disciplinary action authorized by the Act in addition to or instead of assessing the administrative penalties set forth in this section.

(b) The administrative penalties set forth in this section take into consideration all of the criteria listed in §1101.702(b) of the Act.

(c) An administrative penalty range of \$100 - \$1,500 per violation per day may be assessed for violations of the following sections of the Act and Rules:

- (1) §1101.552;
- (2) §1101.652(a)(3);
- (3) §1101.652(a)(8);
- (4) §1101.652(a-1)(3);
- (5) §1101.652(b)(23);
- (6) §1101.652(b)(29);
- (7) §1101.652(b)(33);
- (8) 22 TAC §535.21(a);
- (9) 22 TAC §535.53;
- (10) 22 TAC §535.65;
- (11) 22 TAC §535.91(d);
- (12) 22 TAC §535.121;
- (13) 22 TAC §535.154;
- (14) 22 TAC §535.155; ~~[and]~~
- (15) 22 TAC §535.157; and
- (16) ~~[(45)]~~ 22 TAC §535.300.

(d) An administrative penalty range of \$500 - \$3,000 per violation per day may be assessed for violations of the following sections of the Act and Rules:

- (1) §§1101.652(a)(4) - (7);
- (2) §1101.652(a-1)(2);
- (3) §1101.652(b)(1);
- (4) §§1101.652(b)(7) - (8);
- (5) §1101.652(b)(12);
- (6) §1101.652(b)(14);
- (7) §1101.652(b)(22);
- (8) §1101.652(b)(28);
- (9) §§1101.652(b)(30) - (31);

- (10) §1101.654(a);
- (11) 22 TAC §531.18;
- (12) 22 TAC §531.20;
- (13) 22 TAC §535.2;
- (14) 22 TAC §535.6(c) - (d);
- (15) 22 TAC §535.16;
- (16) 22 TAC §535.17; and
- (17) 22 TAC §535.144.

(e) An administrative penalty range of \$1,000 - \$5,000 per violation per day may be assessed for violations of the following sections of the Act and Rules:

- (1) §1101.351;
- (2) §1101.366(d);
- (3) §1101.557(b);
- (4) §1101.558;
- (5) §§1101.559(a) and (c);
- (6) §1101.560;
- (7) §1101.561(b);
- (8) §1101.615;
- (9) §1101.651;
- (10) §1101.652(a)(2);
- (11) §1101.652(a-1)(1);
- (12) §§1101.652(b)(2) - (6);
- (13) §§1101.652(b)(9) - (11);
- (14) §1101.652(b)(13);
- (15) §§1101.652(b)(15) - (21);
- (16) §§1101.652(b)(24) - (27);
- (17) §1101.652(b)(32);
- (18) 22 TAC §535.141(f);
- (19) 22 TAC §§535.145 - 535.148; and
- (20) 22 TAC §535.156.

(f) The Commission may assess an additional administrative penalty of up to two times that assessed under subsections (c), (d) and (e) of this section, subject to the maximum penalties authorized under §1101.702(a) of the Act, if a person has a history of previous violations.

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

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## SUBCHAPTER R. REAL ESTATE INSPECTORS

### 22 TAC §535.210, §535.219

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.210, Fees and §535.219, Schedule of Administrative Penalties, in Chapter 535, General Provisions.

The amendments are being proposed to reflect statutory changes enacted by the 88th Legislature in HB 1363, which eliminated the real estate inspection recovery fund. The proposed changes to 535.210 reflect the fact that for applications submitted as of September 1, 2023, the \$10 fee will no longer be required. The proposed changes to §535.219 replace a repealed statutory section with a related rule--22 TAC §535.220(g) (although related, this rule is authorized by another statutory provision).

Vanessa E. Burgess, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections.

There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Burgess also has determined that for each year of the first five years the section as proposed are in effect, the public benefit anticipated as a result of enforcing the section will be greater clarity in the rules and consistency with the applicable statutory requirements.

Except as noted below, for each year of the first five years the proposed amendments are in effect the amendments will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability; or
- positively or adversely affect the state's economy.

By eliminating the real estate inspection recovery fund, for those inspector applicants submitting an application on or after September 1, 2023, they will no longer be required to pay the \$10 fee upon successful completion of the exam.

Comments on the proposal may be submitted through the online comment submission form at <https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules>, to Vanessa Burgess, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to [general.counsel@trec.texas.gov](mailto:general.counsel@trec.texas.gov).

The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. The amendments are also proposed under Texas Occupations Code, §1102.403, which allows the Commission to impose an administrative penalty as provided by Subchapter O, Chapter 1101 pursuant to that section.

The statute affected by this proposal is Texas Occupations Code, Chapter 1102. No other statute, code or article is affected by the proposed amendments.

§535.210. *Fees.*

(a) The Commission shall charge and collect the following fees:

- (1) a fee of \$60 for filing an original or reinstatement application for a license as an apprentice inspector;
- (2) a fee of \$100 for filing an original or reinstatement application for a license as a real estate inspector, which includes a fee for transcript evaluation;
- (3) a fee of \$120 for filing an original or reinstatement application for a license as a professional inspector, which includes a fee for transcript evaluation;
- (4) a fee of \$30 for the timely renewal of the license of an apprentice inspector;
- (5) a fee of \$50 for the timely renewal of the license of a real estate inspector;
- (6) a fee of \$60 for the timely renewal of the license of a professional inspector;
- (7) a fee equal to 1-1/2 times the timely renewal fee for the late renewal of a license within 90 days of expiration;
- (8) a fee equal to two times the timely renewal fee for the late renewal of a license more than 90 days but less than six months after expiration;
- (9) a fee for taking a license examination consisting of a national portion and a state portion or retaking the national part of the license examination;
- (10) a fee for taking a license examination without a national portion or retaking the state part of the license examination;
- (11) a fee of \$50 to request an inactive professional inspector license be returned to active status;
- (12) a fee of \$50 for the filing of a fitness determination;
- (13) the fee required by the Department of Information Resources as a subscription or convenience fee for use of an online payment system;
- (14) a fee of \$400 for filing an application for accreditation of a qualifying inspector education program for a period of four years;
- (15) after initial approval of accreditation, a fee of \$200 a year for operation of a qualifying inspector education program;
- (16) a fee of \$50 plus the following fees per classroom hour approved by the Commission for each qualifying inspector education course for a period of four years:

- (A) \$5 for content and examination review;
- (B) \$5 for classroom delivery design and presentation review; and
- (C) \$10 for distance education delivery design and presentation review.

(17) a fee of \$400 for filing an application for accreditation as a continuing inspector education provider for a period of two years;

(18) a fee of \$50 plus the following fees per classroom hour approved by the Commission for each continuing inspector education course for a period of two years:

- (A) \$2.50 for content and examination review;
- (B) \$2.50 for classroom delivery design and presentation review; and
- (C) \$5 for distance education delivery design and presentation review.

(19) the fee required under paragraphs (16)(C) and (18)(C) of this subsection will be waived if the course has already been certified by a distance learning certification center acceptable to the Commission;[-]

(20) for an applicant who submits an application prior to September 1, 2023, a fee of \$10 for deposit in the Real Estate Inspection Recovery Fund upon an applicant's successful completion of an examination; and

(21) the fee charged by the Federal Bureau of Investigation and Texas Department of Public Safety for fingerprinting or other service for a national or state criminal history check in connection with a license application.

(b) Fees established by this section must be paid when an application is filed and are not refundable once an application has been accepted for filing.

(c) If the Commission receives an application that requires payment of a fee, and a sufficient fee was not submitted with the application, the Commission will return the application and notify the person filing the application that the person must pay the fee before the application will be processed.

(d) If a payment to the Commission by or on behalf of a license holder or applicant is dishonored or reversed by a bank or other financial institution, the Commission shall send a request for payment of the dishonored or reversed payment by certified mail to the last known mailing address of the license holder or applicant as shown in the records of the Commission. If the Commission has sent a request for payment in accordance with the provisions of this section, and the license holder or applicant fails to make good on the payment in the form of a cashier's check, money order, or credit card payment within 30 days after the Commission has mailed the request, the license will be placed on inactive status.

(e) Placing a license on inactive status under this section does not preclude the Commission from proceeding under §1101.652(a)(3), Texas Occupations Code, against a license holder who has failed to make good a payment issued to the Commission within a reasonable time.

§535.219. *Schedule of Administrative Penalties.*

(a) The Commission may suspend or revoke a license or take other disciplinary action authorized by Chapter 1102 in addition to or instead of assessing the administrative penalties set forth in this section.

(b) The administrative penalties set forth in this section consider the criteria listed in §1101.702(b) of the Act.

(c) An administrative penalty range of \$100 - \$1,500 per violation per day may be assessed for violations of the following sections of Chapter 1101, Chapter 1102 and this subchapter:

- (1) §1101.652(a)(8);
- (2) §1102.118;
- (3) §1102.305;
- ~~[(4) §1102.364];~~
- (4) ~~[(5)]~~ 22 TAC §535.216(c);
- (5) ~~[(6)]~~ 22 TAC §535.217;
- (6) ~~[(7)]~~ 22 TAC §535.220(a) - (d) and (g);
- (7) ~~[(8)]~~ 22 TAC §535.221; and
- (8) ~~[(9)]~~ 22 TAC §535.223.

(d) An administrative penalty range of \$500 - \$3,000 per violation per day may be assessed for violations of the following sections of Chapter 1101, Chapter 1102 and this subchapter:

- (1) §1101.652(a)(3) - (4);
- (2) §1102.301;
- (3) 22 TAC §535.222;
- (4) 22 TAC §535.226(d) - (e); and
- (5) 22 TAC §§535.227 - 535.233.

(e) An administrative penalty of \$1,000 - \$5,000 per violation per day may be assessed for violations of the following sections of Chapter 1101, Chapter 1102 and this subchapter:

- (1) §1101.652(a)(2), (5) - (6);
- (2) §1102.101;
- (3) §1102.102;
- (4) §1102.103;
- (5) §1102.302;
- (6) §1102.303;
- (7) §1102.304;
- (8) 22 TAC §535.208(e)(2);
- (9) 22 TAC §535.211;
- (10) 22 TAC §535.215;
- (11) 22 TAC §535.220(e)(1), (3) - (7); and
- (12) 22 TAC §535.224(b)(1) - (2).

(f) The Commission may assess an administrative penalty of up to two times that outlined under subsections (c), (d), and (e) of this section, subject to the maximum penalties authorized under §1101.702(a) of the Act, if a person has a history of previous violations.

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

Filed with the Office of the Secretary of State on August 9, 2023.  
TRD-202302899

Vanessa E. Burgess  
General Counsel  
Texas Real Estate Commission  
Earliest possible date of adoption: September 24, 2023  
For further information, please call: (512) 936-3284



## CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

### 22 TAC §537.62

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §537.62, Standard Contract Form TREC No. OP-H, Seller's Disclosure Notice; in Chapter 537, Professional Agreements and Standard Contracts. Texas real estate license holders are generally required to use forms promulgated by TREC when negotiating contacts for the sale of real property, although some forms--like the Seller's Disclosure Notice--are adopted by the Commission for voluntary use by license holders. Contract forms are drafted and recommended for proposal by the Texas Real Estate Broker-Lawyer Committee, an advisory body consisting of six attorneys appointed by the President of the State Bar of Texas, six brokers appointed by TREC, and one public member appointed by the governor. The Texas Real Estate Broker-Lawyer Committee recommended revisions to the contract forms adopted by reference under the proposed amendments to Chapter 537 to comply with statutory changes enacted by the 88th Legislature in HB 697.

The Seller's Disclosure Notice is updated to comply with the requirements of HB 697, which add a disclosure related to fuel gas piping to the statutorily-required notice.

Vanessa E. Burgess, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections.

There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Burgess also has determined that for each year of the first five years the sections as proposed are in effect, the public benefits anticipated as a result of enforcing the sections as proposed will be improved clarity and requirements that are consistent with the statute.

For each year of the first five years the proposed amendments are in effect the amendments will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;

- expand, limit or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability; or
- positively or adversely affect the state's economy.

Comments on the proposal may be submitted through the online comment submission form at <https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules>, to Vanessa E. Burgess, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to [general.counsel@trec.texas.gov](mailto:general.counsel@trec.texas.gov). The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. The amendments are also proposed under Texas Occupations Code §1101.155, which allows the Commission to adopt rules in the public's best interest that require license holders to use contract forms prepared by the Broker-Lawyer Committee and adopted by the Commission.

The statute affected by these amendments is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendments.

§537.62. *Standard Contract Form TREC No. 55-0 [OP-H], Seller's Disclosure Notice.*

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 55-0 [OP-H] approved by the Commission in 2023 [2019] for voluntary use to fulfill the disclosure requirements of Texas Property Code §5.008.

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

Filed with the Office of the Secretary of State on August 9, 2023.

TRD-202302900  
Vanessa E. Burgess  
General Counsel  
Texas Real Estate Commission  
Earliest possible date of adoption: September 24, 2023  
For further information, please call: (512) 936-3284



## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 15. TEXAS VETERANS COMMISSION

#### CHAPTER 460. FUND FOR VETERANS' ASSISTANCE

##### SUBCHAPTER A. GENERAL PROVISIONS REGARDING THE FUND FOR VETERANS' ASSISTANCE PROGRAM

#### 40 TAC §460.2

The Texas Veterans Commission (Commission) proposes amendments to Administrative Rules Chapter 460, Subchapter A, §460.2, Definitions.

## PART I. PURPOSE AND BACKGROUND

The proposed amendments are made following a comprehensive review of the chapter. Staff determined the need to update the rule language to ensure the agency's administrative rules are current and accurately reflect the Commission policies and procedures. Additionally, the changes will provide the Commission with more flexibility in awarding grant funds under the Veterans' Assistance Grant Program.

## PART II. EXPLANATION OF SECTIONS

### SUBCHAPTER A. GENERAL PROVISIONS REGARDING THE FUND FOR VETERANS' ASSISTANCE GRANT PROGRAM

#### §460.2. Definitions.

Paragraph (5) deletes expenditure benchmarks from the definitions section and subsequent paragraphs are renumbered.

Paragraph (7) changes the name of the definition from "Performance Benchmarks" to "Performance Measures" and adds a definition for "Performance Measures."

## PART III. IMPACT STATEMENTS

### FISCAL NOTE

Coretta Briscoe, Chief Financial Officer of the Texas Veterans Commission, has determined for each year of the first five years the proposed rule amendment will be in effect, there will not be an increase in expenditures or revenue for state and local government as a result of administering the proposed rule.

### COSTS TO REGULATED PERSONS

Ms. Briscoe has also determined there will not be anticipated economic costs to persons required to comply with the proposed rule.

### LOCAL EMPLOYMENT IMPACT

Anna Baker, Director, Veterans Employment Services of the Texas Veterans Commission, has determined that there will not be a significant impact upon employment conditions in the state from the proposed rule.

### SMALL BUSINESS, MICRO BUSINESS AND RURAL COMMUNITIES IMPACT

Megan Tamez, Veterans Entrepreneur Program of the Texas Veterans Commission, has determined that the proposed rule will not have an adverse economic effect on small businesses, micro businesses or rural communities as defined in Texas Government Code §2006.001. As a result, an Economic Impact Statement and Regulatory Flexibility Analysis is not required.

### PUBLIC BENEFIT

Shawn Deabay, Deputy Executive Director of the Texas Veterans Commission, has determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated as a result of administering the amended rule will increase participation within each of the agency's three remaining advisory committees.

## GOVERNMENT GROWTH IMPACT STATEMENTS

Mr. Deabay has also determined that for each year of the first five years that the proposed rule amendment is in effect, the following statements will apply:

(1) The proposed rule amendment will not create or eliminate a government program.

(2) Implementation of the proposed rule amendment will not require creation of new employee positions or elimination of existing employee positions.

(3) Implementation of the proposed rule amendment will not require an increase or decrease in future legislative appropriations to the agency.

(4) No fees will be created by the proposed rule amendment.

(5) The proposed rule amendment will not require new regulations.

(6) The proposed rule amendment has no effect on existing regulations.

(7) The proposed rule amendment has no effect on the number of individuals subject to the rule's applicability.

(8) The proposed rule amendment has no effect on this state's economy.

## PART IV. COMMENTS

Comments on the proposed new rules may be submitted to Attention: General Counsel, Texas Veterans Commission, P.O. Box 12277, Austin, Texas 78711 or by fax to (512) 475-2395. Comments may also be submitted electronically to [rulemaking@tvc.texas.gov](mailto:rulemaking@tvc.texas.gov). For comments submitted electronically, please include "Chapter 460, Subchapter A, §460.2, Definitions" in the subject line. The deadline for submission of comments is twenty days from the date of publication of the proposed new section in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the rule under consideration.

## PART V. STATUTORY AUTHORITY

The proposed amendments are authorized under Texas Government Code §434.010, granting the Commission the authority to establish rules, and Texas Government Code §434.017, granting the Commission the authority to establish rules governing the award of grants by the Commission.

No other statutes, articles, or codes are affected by this proposal.

### §460.2. Definitions.

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

(1) Advisory Committee--The committee formed under §452.2(c) of this title (relating to Fund for Veterans' Assistance Advisory Committee).

(2) Agency--The Texas Veterans Commission.

(3) Commission--The members of the Texas Veterans Commission.

(4) Disallowed Cost--A questioned cost that the Agency has determined, violates the conditions of the Grant Agreement, or other law, regulation, or other document governing the expenditures of funds.

~~(5) Expenditure Benchmark--The percent of the total grant award that must be expended and reported by designated timeframes within the grant period. The specific timeframes are:]~~

{(A) If 25% of the grant period has elapsed, at least 15% of the total award amount must have been expended;}

{(B) If 50% of the grant period has elapsed, at least 40% of the total award must have been expended; and}

{(C) If 75% of the grant period has elapsed, at least 70% of the total award must have been expended.}

(5) [(6)] Grantee--An organization that receives a grant award under this chapter.

(6) [(7)] Performance Measures [Benchmark]--The benchmarks the Texas Veterans Commission establishes and must be met within the grant period. These approved benchmarks will be included in the Fund for Veterans Assistance Request for Application. [The percent of each minimum required performance measure that must be met and reported by designated timeframes within the grant period. The specific timeframes are:]

{(A) If 25% of the grant period has elapsed, at least 15% of minimum required performance measure targets must have been met;}

{(B) If 50% of the grant period has elapsed, at least 40% of minimum required performance measure targets must have been met; and}

{(C) If 75% of the grant period has elapsed, at least 70% of minimum required performance measure targets must have been met.}

(7) [(8)] Questioned Cost--A cost that has been identified to be:

(A) an alleged violation of a provision of the Grant Agreement, law, regulation, or other agreement or document governing the expenditure of funds;

(B) a cost that is not supported by adequate documentation; or

(C) a cost that is unnecessary or unreasonable.

(8) [(9)] Received by the Agency--Documents may be sent electronically or by U.S. Mail, overnight delivery, hand delivery, or courier service.

(9) [(10)] Reimbursement Grant--The Texas Veterans Commission Fund for Veterans' Assistance awards grants on a cost reimbursement basis. Under the cost reimbursement method of funding, a Grantee is required to finance its operations, beyond any authorized initial costs or payments, with its own working capital with Grant payments made to reimburse the Grantee for actual cash disbursements supported by adequate documentation.

(10) [(11)] Units of Local Government--A county, municipality, special district, school district, junior college district, a local workforce development board created under §2308.253, Texas Government Code, or other legally constituted political subdivision of the state.

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

Filed with the Office of the Secretary of State on August 11, 2023.

TRD-202302956

Kathleen Cordova

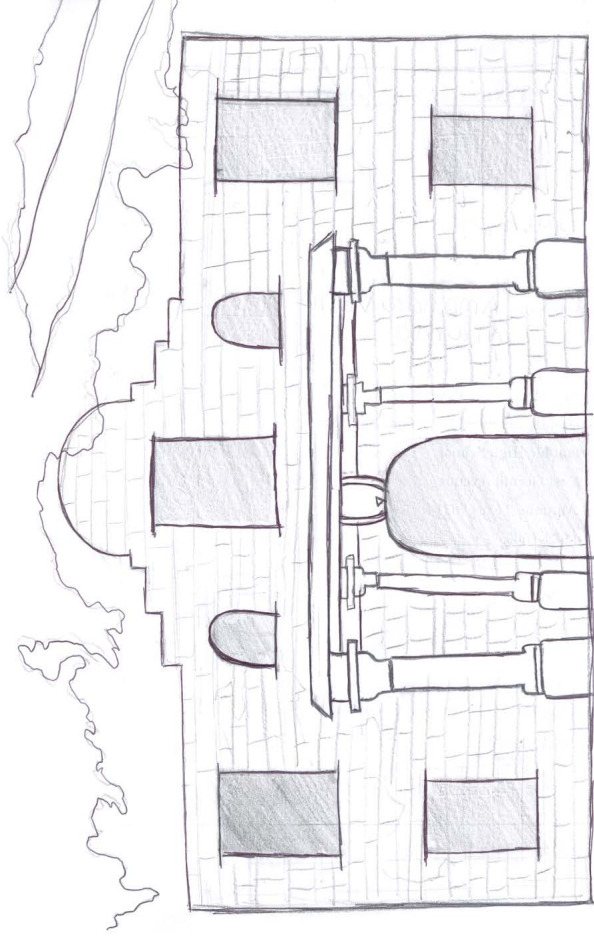
General Counsel

Texas Veterans Commission

Earliest possible date of adoption: September 24, 2023

For further information, please call: (737) 320-4167





# WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

## TITLE 16. ECONOMIC REGULATION

### PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

#### CHAPTER 97. MOTOR FUEL METERING AND QUALITY

##### SUBCHAPTER B. MOTOR FUEL METERING DEVICES

###### 16 TAC §§97.20 - 97.22, 97.27

The Texas Department of Licensing and Regulation withdraws proposed amendment §§97.20 - 97.22, 97.27 which appeared in the March 24, 2023, issue of the *Texas Register* (48 TexReg 1612).

Filed with the Office of the Secretary of State on August 10, 2023.

TRD-202302930

Doug Jennings

General Counsel

Texas Department of Licensing and Regulation

Effective date: August 10, 2023

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



###### 16 TAC §97.32, §97.33

The Texas Department of Licensing and Regulation withdraws proposed new §97.32 and §97.33, which appeared in the March 24, 2023, issue of the *Texas Register* (48 TexReg 1612).

Filed with the Office of the Secretary of State on August 10, 2023.

TRD-202302931

Doug Jennings

General Counsel

Texas Department of Licensing and Regulation

Effective date: August 10, 2023

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



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 13. TEXAS COMMISSION ON FIRE PROTECTION

#### CHAPTER 463. ADVISORY COMMITTEES, PRACTICE AND PROCEDURES

##### 37 TAC §§463.1, 463.3, 463.5, 463.7, 463.9, 463.11, 463.13, 463.15, 463.17

The Texas Commission on Fire Protection withdraws proposed new §§463.1, 463.3, 463.5, 463.7, 463.9, 463.11, 463.13, 463.15, 463.17, which appeared in the May 26, 2023, issue of the *Texas Register* (48 TexReg 2679).

Filed with the Office of the Secretary of State on August 11, 2023.

TRD-202302939

Mike Wisko

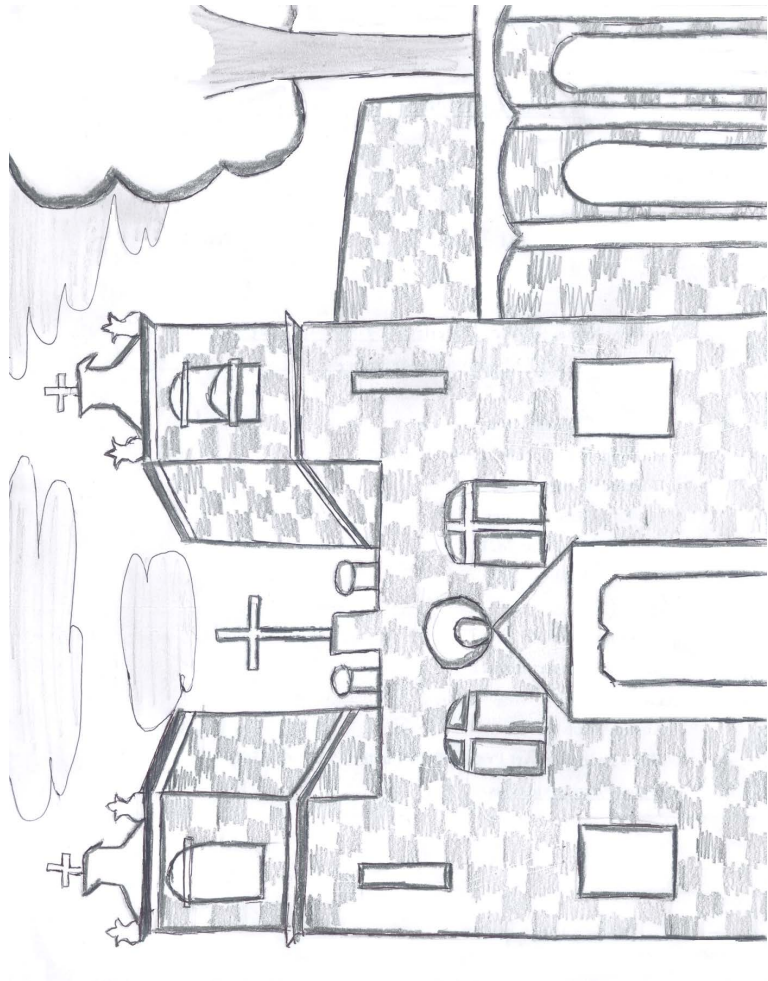
Agency Chief

Texas Commission on Fire Protection

Effective date: August 11, 2023

For further information, please call: (512) 936-3841







# 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 1. ADMINISTRATION

### PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 355. REIMBURSEMENT RATES SUBCHAPTER A. COST DETERMINATION PROCESS

##### 1 TAC §355.112

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §355.112, concerning Attendant Compensation Rate Enhancement. Section 355.112 is adopted with changes to the proposed text as published in the July 7, 2023, issue of the *Texas Register* (48 TexReg 3565). This rule will be republished.

##### BACKGROUND AND PURPOSE

Title 42, Code of Federal Regulations (CFR) §441.301(c)(4)(i) - (v) requires home and community-based settings in programs authorized by §1915(c) of the Social Security Act to have certain qualities, including being integrated into and supporting full access of individuals to the greater community. HHSC adopted rules to implement individualized skills and socialization in the December 23, 2022, issue of the *Texas Register*.

The 2022-2023 General Appropriations Act (GAA), Senate Bill (S.B.) 1, 87th Legislature, Regular Session, 2021 (Article II, Health and Human Services Commission, Rider 23) authorized funding for the provision of individualized skills and socialization in the Home and Community-based Services (HCS), Texas Home Living (TxHmL), and Deaf-Blind with Multiple Disabilities (DBMD) programs. HHSC adopted rates for individualized skills and socialization based on the available appropriations, effective January 1, 2023. The amendment replaces day habilitation with individualized skills and socialization services for the Attendant Compensation Rate Enhancement Program.

The amendment clarifies that providers contracted with a managed care organization to provide attendant care services may participate in the Attendant Compensation Rate Enhancement Program through their managed care organizations. The amendment removes references to Community Based Alternatives (CBA)--Assisted Living/Residential Care (AL/RC) and CBA--Home and Community Support Services (HCSS). These programs were carved into managed care in 2015, and HHSC neither enrolls these providers in the Attendant Compensation Rate Enhancement Program nor determines spending requirements associated with the program.

The amendment modifies several aspects of the Attendant Compensation Rate Enhancement Program. The amendment

changes the requirements for participating providers to submit an attendant compensation report for determining spending requirements in the Attendant Compensation Rate Enhancement Program. The amendment clarifies that if providers are required to submit a cost report for a rate year, HHSC will use the cost report as an attendant compensation report. For rate years in which participating providers are not required to submit a cost report, HHSC will require a subset of participating providers to submit an accountability report to serve as an attendant compensation report. These providers will be selected at random from the total number of participating contracts that are not required to submit a cost report for a rate year. The number selected will represent a statistically valid sample of participating providers. The amendment modifies report submission requirements for contracts participating in the Attendant Compensation Rate Enhancement Program undergoing a change of ownership or a contract termination by relaxing the requirement that these providers must submit a report to HHSC. The amendment removes provisions allowing limited providers to submit the request for revision report or request for recalculation while modifying parameters regarding limitations.

The amendment implements some recommendations in HHSC's legislative report, *Rates: Intermediate Care Facilities and Certain Waiver Providers*, required by the 2022-2023 GAA, S.B. 1, 87th Legislature, Regular Session, 2021 (Article II, Health and Human Services Commission, Rider 30). The amendment repeals the requirement that an attendant must perform attendant functions at least 80 percent of his or her total time worked to be considered an attendant for determining spending requirements in the Attendant Compensation Rate Enhancement Program or for calculating the attendant compensation rate component. The amendment provides that any staff who performs attendant functions to prevent a break in service will be considered an attendant.

The amendment modifies the methodology HHSC uses to calculate the attendant compensation rate component for each attendant service. HHSC will calculate the attendant compensation rate component by calculating a median of attendant compensation cost center data weighted by each attendant service units of service from the most recent Medicaid cost report database. The attendant compensation cost component will be inflated using HHSC's inflation methodology from the cost reporting period to the prospective rate period and limited to available levels of state and federal appropriations.

##### COMMENTS

The 21-day comment period ended July 28, 2023.

During this period, HHSC received comments regarding the proposed rule from four commenters, including the following organizations: the Providers Alliance for Community Services of Texas (PACSTX), Private Providers Association of Texas

(PPAT), Texas Association for Home Care & Hospice (TAHC&H), and the Texas Council of Community Centers (Texas Council).

A summary of comments relating to §355.112 and HHSC's responses follow:

Comment: Several commenters expressed support for the definition of attendant in §355.112(c).

Response: HHSC appreciates the supportive comment regarding this proposed change and will adopt this section without changes. No changes were made in response to this comment.

Comment: Several commenters expressed opposition to the amendment to §355.112(m) to limit the attendant compensation rate component to available levels of appropriated state and federal funds as specified in §355.201 of this chapter (relating to Establishment and Adjustment of Reimbursement Rates for Medicaid). Commenters are concerned that the amendment changes the rate methodology allowing HHSC to bypass the true costs in the most recent provider cost report to what is adopted by the Legislature. Commenters contend the amendment would give HHSC the ability to abdicate its responsibility as the state's Medicaid agency to inform the Legislature when appropriations fall short in supporting rates that ensure access to care.

Response: HHSC will revise §355.112(m)(4) as it was not the agency's intention to limit the methodological rate component to appropriated levels but rather to emphasize that adopted rates are limited to available appropriations as already specified in §355.201.

Comment: One commenter expressed concerns that the service support portion of the attendant rate has not been upwardly adjusted since 2007, over 16 years. The rate methodology as proposed will prevent adjustment beyond the appropriation allowing the continuation of insufficient funding of service supports and impacting every aspect of operations for community care.

Response: HHSC disagrees, as the methodology related to the service support or administration and operations rate components are outside the scope of the amendment to §355.112. No changes were made in response to this comment.

Comment: Several commenters expressed opposition to removing recoupment recalculations from §355.112(n).

Response: HHSC disagrees and declines to modify the rule because recalculations were a process affiliated with a retired cost report collection system and are no longer used under HHSC's current practices. A provider will still be able to request that HHSC reevaluate recoupment determinations if the provider believes there was an error in the original calculations. Furthermore, a provider can still seek an informal review and provide additional supporting information if the provider believes any revisions made during HHSC's financial examination process were made in error.

Comment: Several commenters expressed opposition to eliminating a limited provider's opportunity to submit a request for revision during the annual open enrollment period for the attendant compensation rate enhancement program.

Response: HHSC disagrees and declines to make any change in response to this comment. The request for revision process allows a provider to overturn the provider's limitation by using unverified data, which could include unallowable costs. The rate enhancement program relies on a limited funding pool. Therefore, the request for revision process may enable a provider who

regularly misses the provider's spending requirements to remain in the program at a higher level and prevents a provider who meets program requirements from the opportunity to obtain a higher enhancement level.

Comment: Several commenters expressed support for new subsection (i)(2), which specifies HHSC will require a subset of participating contracted providers at random to submit an annual attendant compensation report on years a provider does not submit a cost report. It would be helpful for provider associations to know how HHSC plans to implement this provision, including the estimated number of providers HHSC plans to use to establish a statistically valid sample and how HHSC will define a statistically valid sample.

Response: HHSC appreciates the supportive comments. HHSC will engage with stakeholders, including provider associations, regarding how §355.112(i)(2) will be implemented. No changes were made in response to this comment.

Comment: Several commenters expressed support for new subsection (m)(3)(B), which clarifies which services in HCS are subject to the 1.07 inflator. Providers had expressed concerns about the application of a lower inflator for individualized skills and socialization while still maintaining a facility. The proposed subsection appears to remedy those concerns.

Response: HHSC appreciates the supportive comments. HHSC's intention with the amendment to §355.112(m)(3)(B) was to revise the rate methodology for individualized skills and socialization so that the 1.07 factor is applied to both on-site and off-site service rates. No changes were made in response to this comment.

Editorial revisions were made to correct spelling and grammar.

#### STATUTORY AUTHORITY

The amendment is adopted under 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; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under Texas Human Resources Code Chapter 32.

#### §355.112. Attendant Compensation Rate Enhancement.

(a) Eligible programs. Providers contracted in the following programs are eligible to participate in the attendant compensation rate enhancement:

- (1) Community Living Assistance and Support Services (CLASS)--Direct Service Agency (DSA);
- (2) Day Activity and Health Services (DAHS);
- (3) Deaf-Blind with Multiple Disabilities Waiver (DBMD);
- (4) Home and Community-based Services (HCS);
- (5) Intermediate Care Facilities for Individuals with Intellectual Disability or Related Conditions (ICF/IID) ("Related Condi-

tions" has the same meaning as in 26 TAC §261.203 (relating to Definitions));

- (6) Primary Home Care (PHC);
- (7) Residential Care (RC); and
- (8) Texas Home Living (TxHmL).

(b) Managed Care Providers. A provider contracted with a managed care organization (MCO) to provide attendant care services may participate in any Attendant Compensation Rate Enhancement Program through the MCO with whom it is contracted, as provided by the MCO's managed care contract with HHSC. Each MCO is responsible for managing any Attendant Compensation Rate Enhancement Program for its contracted providers, including provider enrollment and compliance with the program's spending requirements or any spending requirements imposed under state or federal law.

(c) Definition of attendant. For the purposes of the Attendant Compensation Rate Enhancement Program under this section, an attendant is an unlicensed caregiver providing direct assistance to individuals with Activities of Daily Living (ADL) and Instrumental Activities of Daily Living (IADL).

(1) Attendants do not include the director, administrator, assistant director, assistant administrator, clerical and secretarial staff, professional staff, other administrative staff, licensed staff, attendant supervisors, cooks and kitchen staff, maintenance and groundskeeping staff, activity director, DBMD Interveners I, II or III, Qualified Intellectual Disability Professionals (QIDPs) or assistant QIDPs, direct care worker supervisors, direct care trainer supervisors, job coach supervisors, foster care providers, and laundry and housekeeping staff. Staff other than attendants may deliver attendant services and be considered an attendant if they must perform attendant services that cannot be delivered by another attendant to prevent a break in service.

(2) An attendant also includes the following:

(A) a driver who is transporting individuals in the DAHS, ICF/IID, and RC programs and the HCS SL/RSS and HCS and TxHmL individualized skills and socialization settings;

(B) a medication aide in the HCS SL/RSS setting, ICF/IID, and RC programs; and

(C) direct care workers, direct care trainers, job coaches, employment assistance direct care workers, and supported employment direct care workers.

(d) Attendant compensation cost center. This cost center will include employee compensation, contract labor costs, and personal vehicle mileage reimbursement for attendants as defined in subsection (c) of this section.

(1) Attendant compensation is the allowable compensation for attendants defined in §355.103(b)(1) of this title (relating to Specifications for Allowable and Unallowable Costs) and required to be reported as either salaries and/or wages, including payroll taxes and workers' compensation, or employee benefits. Benefits required by §355.103(b)(1)(A)(iii) of this title to be reported as costs applicable to specific cost report line items, except as noted in paragraph (3) of this subsection, are not to be included in this cost center. For ICF/IID, attendant compensation is also subject to the requirements detailed in §355.457 of this title (relating to Cost Finding Methodology). For HCS and TxHmL, attendant compensation is also subject to the requirements detailed in §355.722 of this title (relating to Reporting Costs by Home and Community-based Services (HCS) and Texas Home Living (TxHmL) Providers).

(2) Contract labor refers to personnel for whom the contracted provider is not responsible for the payment of payroll taxes, such as FICA, Medicare, and federal and state unemployment insurance, and who perform tasks routinely performed by employees where allowed by program rules.

(3) Mileage reimbursement paid to the attendant for the use of his or her personal vehicle and which is not subject to payroll taxes is considered compensation for this cost center.

(e) Rate year. The rate year begins on the first day of September and ends on the last day of August of the following year.

(f) Open enrollment. Open enrollment begins on the first day of July and ends on the last day of that same July preceding the rate year for which payments are being determined. The Texas Health and Human Services Commission (HHSC) notifies providers of open enrollment via email sent to an authorized representative per the signature authority designation form applicable to the provider's contract or ownership type. Requests to modify a provider's enrollment status during an open enrollment period must be received by HHSC by the last day of the open enrollment period through HHSC's enrollment portal or another method designated by HHSC. If the last day of open enrollment is on a weekend day, state holiday, or national holiday, the next business day will be considered the last day requests will be accepted. If open enrollment has been postponed or canceled, HHSC will notify providers by email before the first day of July. Should conditions warrant, HHSC may conduct additional enrollment periods during a rate year.

(g) Enrollment contract amendment.

(1) For CLASS--DSA, DBMD, DAHS, RC and PHC, an initial enrollment contract amendment is required from each provider choosing to participate in the attendant compensation rate enhancement. On the initial enrollment contract amendment, the provider must specify for each contract a desire to participate or not to participate and a preferred participation level.

(2) For ICF/IID, HCS and TxHmL, an initial enrollment contract amendment is required from each provider choosing to participate in the attendant compensation rate enhancement. On the initial enrollment contract amendment, the provider must specify for each component code a desire to participate or not to participate and a preferred participation level. All contracts of a component code within a specific program must either participate at the same level or not participate.

(A) For the ICF/IID program, the participating provider must also specify the services the provider wishes to participate in the attendant compensation rate enhancement. Eligible services are residential services and day habilitation services. The participating provider must specify whether the provider wishes to participate for residential services only, day habilitation services only or both residential services and day habilitation services.

(B) For the HCS and TxHmL programs, eligible services are divided into three categories. The three categories of services eligible for rate enhancement are the following:

(i) non-individualized skills and socialization services:

(I) SHL/CFC PAS HAB/CSS;

(II) in-home respite (IHR) and out-of-home respite (OHR);

(III) supported employment (SE); and

(IV) employment assistance (EA);

and (ii) individualized skills and socialization services;

(iii) residential services:

(I) SL; and

(II) RSS.

(C) The participating provider must specify which combination of the three categories of services the attendant compensation rate enhancement will apply to. For providers delivering services in both the HCS and TxHmL programs, the selected categories must be the same for their HCS and TxHmL programs, except for residential services which are only available in the HCS program.

(3) After initial enrollment, participating and nonparticipating providers may request to modify their enrollment status during any open enrollment period as follows:

(A) a nonparticipant can request to become a participant;

(B) a participant can request to become a nonparticipant; or

(C) a participant can request to change its participation level.

(4) Providers whose prior year enrollment was limited by subsection (v) of this section who request to increase their enrollment levels will be limited to increases of three or fewer enhancement levels during the first open enrollment period after the limitation. Providers that were subject to an enrollment limitation may request to participate at any level during open enrollment beginning two years after limitation.

(5) Requests to modify a provider's enrollment status during an open enrollment period must be received by HHSC by the last day of the open enrollment period as per subsection (f) of this section. If the last day of open enrollment is on a weekend day, state holiday, or national holiday, the next business day will be considered the last day requests will be accepted.

(6) For PHC, DAHS, RC, and CLASS--DSA providers from which HHSC has not received an acceptable request to modify their enrollment by the last day of the open enrollment period will continue at the level of participation in effect during the open enrollment period within available funds until the provider notifies HHSC in accordance with subsection (y) of this section that it no longer wishes to participate or until the provider's enrollment is limited in accordance with subsection (v) of this section.

(7) To be acceptable, an enrollment contract amendment must be completed according to instructions, signed by an authorized representative as per HHSC's signature authority designation form applicable to the provider's contract or ownership type, and legible.

(h) Enrollment of new contracts. For the purposes of this section, for each rate year a new contract is defined as a contract or component code whose effective date is on or after the first day of the open enrollment period, as defined in subsection (f) of this section, for that rate year. Contracts that underwent a contract assignment or change of ownership and new contracts that are part of an existing component code are not considered new contracts. For purposes of this subsection, an acceptable contract amendment is defined as a legible enrollment contract amendment that has been completed according to instructions, signed by an authorized representative as per HHSC's signature authority designation form applicable to the provider's contract or ownership type, and received by HHSC within 30 days of notification to the provider that such an enrollment contract amendment must be submitted. If the

30th day is on a weekend day, state holiday, or national holiday, the next business day will be considered the last day requests will be accepted. New contracts will receive the nonparticipant attendant compensation rate as specified in subsection (m) of this section with no enhancements. For new contracts specifying their desire to participate in the attendant compensation rate enhancement on an acceptable enrollment contract amendment, the attendant compensation rate is adjusted as specified in subsection (s) of this section, effective on the first day of the month following receipt by HHSC of an acceptable enrollment contract amendment. If the granting of newly requested enhancements was limited by subsection (q)(2)(B) of this section during the most recent enrollment, enrollment for new contracts will be subject to that same limitation. If the most recent enrollment was canceled by subsection (f) of this section, new contracts will not be permitted to be enrolled.

(i) Attendant Compensation Report.

(1) Definition of Attendant Compensation Report. An attendant compensation report is a report reflecting the provider's activities while delivering contracted services from the first day of the rate year through the last day of the rate year or provider's cost report year while participating in the attendant compensation rate enhancement program. This report is used as the basis for determining compliance with the spending requirements as described in subsection (t) of this section. Cost and accountability reports requested by HHSC are considered attendant compensation reports, and preparers must complete mandatory training requirements per §355.102(d) of this subchapter (relating to General Principles of Allowable and Unallowable Costs).

(2) Providers must file Attendant Compensation Reports as follows. HHSC will require a subset of participating contracted providers to submit an annual Attendant Compensation Report to HHSC in a method specified by HHSC.

(A) Cost reports serving as Attendant Compensation Reports. If HHSC requires a participating provider to file a cost report for a rate year, HHSC will use that provider's cost report as an Attendant Compensation Report as the basis for determining compliance with the spending requirements as described in subsection (t) of this section.

(B) Accountability reports serving as Attendant Compensation Reports. HHSC will require a select number of participating providers who are not required to submit a cost report for a rate year to submit an accountability report, which will serve as an Attendant Compensation Report as the basis for determining compliance with the spending requirements as described in subsection (t) of this section. These providers will be selected at random from the total number of participating contracts that are not required to submit a cost report for a rate year. The number selected must represent a statistically valid sample of participating providers.

(C) The Attendant Compensation Report must be submitted for each participating contract if the provider requested participation individually for each contract; or, if the provider requested participation as a group, the report must be submitted as a single aggregate report covering all contracts participating at the end of the rate year within one program of the provider. A participating contract that has been terminated in accordance with subsection (w) of this section or that has undergone a contract assignment in accordance with subsection (x) of this section will be considered to have participated on an individual basis for compliance with reporting requirements for the owner prior to the termination or contract assignment.

(D) If required to submit a report by HHSC, contracted providers failing to submit an acceptable annual Attendant Compensation Report within 60 days of the end of the rate year will be placed

on vendor hold until such time as an acceptable report is received and processed by HHSC.

(E) When a participating provider changes ownership through a contract assignment, the prior owner may be required to submit an Attendant Compensation Report covering the period from the beginning of the rate year to the effective date of the contract assignment as determined by HHSC, or its designee. If required, this report will be used as the basis for determining any recoupment amounts as described in subsection (t) of this section. The new owner may be required to submit an Attendant Compensation Report covering the period from the day after the date recognized by HHSC, or its designee, as the contract-assignment effective date to the end of the rate year.

(F) Participating providers whose contracts are terminated voluntarily or involuntarily may be required to submit an Attendant Compensation Report covering the period from the beginning of the rate year to the date recognized by HHSC or its designee as the contract termination date. If required, this report will be used as the basis for determining recoupment as described in subsection (t) of this section.

(G) Participating providers who voluntarily withdraw from participation, as described in subsection (y) of this section, may be required to submit an Attendant Compensation Report within 60 days from the date of withdrawal as determined by HHSC. If required, this report must cover the period from the beginning of the rate year through the date of withdrawal as determined by HHSC and will be used as the basis for determining any recoupment amounts as described in subsection (t) of this section.

(H) Participating providers whose cost report year, as defined in §355.105(b)(5) of this subchapter (relating to General Reporting and Documentation Requirements, Methods, and Procedures), coincides with the state of Texas fiscal year, are exempt from the requirement to submit a separate Attendant Compensation Report. For these contracts, their cost report will be considered their Attendant Compensation Report.

(3) Cost Reports. Cost reports as described in §355.105(b) - (c) of this subchapter will serve as the Attendant Compensation Report with the following exceptions.

(A) When a participating provider changes ownership through a contract assignment or change of ownership, the previous owner may be required to submit an Attendant Compensation Report covering the period from the beginning of the provider's cost reporting period to the date recognized by HHSC, or its designee, as the contract-assignment or ownership-change effective date. If required, this report will be used as the basis for determining any recoupment amounts as described in subsection (t) of this section. The new owner may be required to submit a cost report covering the period from the day after the date recognized by HHSC or its designee as the contract-assignment or ownership-change effective date to the end of the provider's fiscal year.

(B) When one or more contracts or, for the ICF/IID, HCS, and TxHmL programs, component codes of a participating provider are terminated, either voluntarily or involuntarily, the provider may be required to submit an Attendant Compensation Report for the terminated contract(s) or component code(s) covering the period from the beginning of the provider's cost reporting period to the date recognized by HHSC, or its designee, as the contract or component code termination date. This report will be used as the basis for determining any recoupment amounts as described in subsection (t) of this section.

(C) When one or more contracts or, for the ICF/IID, HCS and TxHmL programs, component codes of a participating provider are voluntarily withdrawn from participation as per subsection (y) of this section, the provider may be required to submit an Attendant Compensation Report within 60 days of the date of withdrawal as determined by HHSC, covering the period from the beginning of the provider's cost reporting period to the date of withdrawal as determined by HHSC. If required, this report will be used as the basis for determining any recoupment amounts as described in subsection (t) of this section. These providers may still be required to submit a cost report covering the entire cost reporting period. The cost report will be used for determining any recoupment amounts.

(D) For new contracts as defined in subsection (h) of this section, the cost reporting period will begin with the effective date of participation in the enhancement.

(E) Existing providers who become participants in the enhancement as a result of the open enrollment process described in subsection (f) of this section on any day other than the first day of their fiscal year may be required to submit an Attendant Compensation Report with a reporting period that begins on their first day of participation in the enhancement and ends on the last day of the provider's fiscal year. If required, this report will be used as the basis for determining any recoupment amounts as described in subsection (t) of this section. These providers may still be required to submit a cost report covering the entire cost reporting period. The cost report will be used for determining any recoupment amounts.

(F) A participating provider that is required to submit a cost report or Attendant Compensation Report under this paragraph will be excused from the requirement to submit a report if the provider did not provide any billable attendant services to HHSC recipients during the reporting period.

(4) Other reports. HHSC may require other reports from all contracts as needed.

(5) Vendor hold. HHSC, or its designee, will place on hold the vendor payments for any participating provider who does not submit a timely report as described in paragraph (2) of this subsection completed in accordance with all applicable rules and instructions. This vendor hold will remain in effect until HHSC receives an acceptable report.

(A) Participating contracts or, for the ICF/IID, HCS and TxHmL programs, component codes may be required to submit an Attendant and Compensation Report. Participating facilities required to submit an Attendant and Compensation Report that do not submit an acceptable report completed in accordance with all applicable rules and instructions within 60 days of the due dates described in this subsection or, for cost reports, the due dates described in §355.105(b) of this subchapter will become nonparticipants retroactive to the first day of the reporting period in question and will be subject to an immediate recoupment of funds related to participation paid to the contractor for services provided during the reporting period in question. These contracts or component codes will remain nonparticipants and recouped funds will not be restored until they submit an acceptable report and repay to HHSC, or its designee, funds identified for recoupment from subsection (t) of this section. If an acceptable report is not received within 365 days of the due date, the recoupment will become permanent and, if all funds associated with participation during the reporting period in question have been recouped by HHSC, or its designee, the vendor hold associated with the report will be released.

(B) Participating contracts or, for the ICF/IID, HCS, and TxHmL programs, component codes that have terminated or undergone a contract assignment or ownership-change from one legal entity

to a different legal entity may be required to submit an Attendant and Compensation Report. Participating facilities required to submit an Attendant and Compensation Report that do not submit an acceptable report completed in accordance with all applicable rules and instructions within 60 days of the contract assignment, ownership-change, or termination effective date will become nonparticipants retroactive to the first day of the reporting period in question. These contracts or component codes will remain nonparticipants, and recouped funds will not be restored until they submit an acceptable report and repay to HHSC, or its designee, funds identified for recoupment under subsection (t) of this section. If an acceptable report is not received within 365 days of the contract assignment, ownership-change, or termination effective date, the recoupment will become permanent and, if all funds associated with participation during the reporting period in question have been recouped by HHSC, or its designee, the vendor hold associated with the report will be released.

(6) Provider-initiated amended Attendant Compensation Reports and cost reports functioning as Attendant Compensation Reports. Reports must be received before the date the provider is notified of compliance with spending requirements for the report in question in accordance with subsection (t) of this section.

(j) Report contents. Each Attendant Compensation Report and cost report functioning as an Attendant Compensation Report will include any information required by HHSC to implement this attendant compensation rate enhancement.

(k) Completion of compensation reports. All Attendant Compensation Reports and cost reports functioning as Attendant Compensation Reports must be completed in accordance with the provisions of §§355.102 - 355.105 of this subchapter (relating to General Principles of Allowable and Unallowable Costs; Specifications for Allowable and Unallowable Costs; Revenues; and General Reporting and Documentation Requirements, Methods, and Procedures) and may be reviewed or audited in accordance with §355.106 of this subchapter (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports). All Attendant Compensation Reports and cost reports functioning as Attendant Compensation Reports must be completed by preparers who have attended the required cost report training for the applicable program under §355.102(d) of this subchapter. For the ICF/IID program, cost reports functioning as Attendant Compensation Reports must also be completed in accordance with the provisions of §355.456 of this chapter (relating to Reimbursement Methodology). For the HCS and TxHmL programs, cost reports functioning as Attendant Compensation Reports must also be completed in accordance with the provisions of §355.722 of this chapter (relating to Reporting Costs by Home and Community-based Services (HCS) and Texas Home Living (TxHmL) Providers).

(l) Enrollment. Providers choosing to participate in the attendant compensation rate enhancement must submit to HHSC a signed enrollment contract amendment as described in subsection (g) of this section. Participation is determined separately for each program specified in subsection (a) of this section, except that for providers delivering both HCS and TxHmL services, participation includes both the HCS and TxHmL programs. For PHC, participation is also determined separately for priority and nonpriority services. For ICF/IID, participation is also determined separately for residential services and day habilitation services. For HCS and TxHmL, participation is also determined separately for the non-individualized skills and socialization services, individualized skills and socialization services, and residential services categories as defined in subsection (g)(2)(B) of this section. Participation will remain in effect, subject to availability of funds, until the provider notifies HHSC, in accordance with subsection (y) of this section, that it no longer wishes to participate or until HHSC excludes the

contract from participation for reasons outlined in subsection (v) of this section. Contracts or component codes voluntarily withdrawing from participation will have their participation end effective with the date of withdrawal as determined by HHSC. Contracts or components codes excluded from participation will have their participation end effective on the date determined by HHSC.

(m) Determination of attendant compensation rate component for nonparticipating contracts.

(1) For CLASS--DSA; DAHS; DBMD; PHC; RC; STAR+PLUS AL; STAR+PLUS HCBS and Non-HCBS programs, HHSC will calculate an attendant compensation rate component for nonparticipating contracts by calculating a median of attendant compensation cost center data as defined in subsection (d) of this section for each applicable attendant service, weighted by the applicable attendant service's units of service from the most recently examined cost report database for each program, and adjusted for inflation from the cost reporting period to the prospective rate period as specified in §355.108 (related to Determination of Inflation Indices).

(A) The weighted median cost component is multiplied by 1.044 for CLASS--DSA, DBMD, PHC, STAR+PLUS HCBS, and Non-HCBS; and by 1.07 for DAHS, RC and STAR+PLUS AL. The result is the attendant compensation rate component for nonparticipating contracts.

(B) If HHSC has insufficient cost data, the attendant compensation rate component will be established through a pro forma costing approach as defined in §355.105(h) of this subchapter.

(2) For ICF/IID DH, ICF/IID residential services, HHSC will calculate an attendant compensation rate component for nonparticipating contracts for each service by calculating a median of attendant compensation cost center data as defined in subsection (d) of this section for each DH and Residential services, weighted by ICF/IID units of service from the most recently examined ICF/IID cost report database, and adjusted for inflation from the cost reporting period to the prospective rate period as specified in §355.108 (related to Determination of Inflation Indices).

(A) The weighted median attendant cost component is adjusted by modeled direct care hours to unit ratios to determine attendant compensation rate components for each level of need (LON).

(B) The weighted median cost component is multiplied by 1.07 for both ICF/IID DH and residential services.

(C) If HHSC has insufficient cost data, the attendant compensation rate component will be established through a pro forma costing analysis as defined in §355.105(h) of this subchapter.

(3) For HCS and TxHmL programs, HHSC will calculate an attendant compensation rate component for nonparticipating contracts for each service by calculating a median of attendant compensation cost center data as defined in subsection (d) of this section for each applicable attendant service, weighted by the applicable attendant service's units of service from the most recently examined HCS/TxHmL cost report database, and adjusted for inflation from the cost reporting period to the prospective rate period as specified in §355.108 (related to Determination of Inflation Indices).

(A) The weighted median cost component is multiplied by 1.044 for the following services:

- (i) EA;
- (ii) IHR;
- (iii) OHR in a camp;

- (iv) OHR in a respite facility;
- (v) OHR in a setting where host home / companion care (HH/CC) is provided;
- (vi) OHR in a setting that is not listed; and
- (vii) SE;

(B) The weighted median cost component is multiplied by 1.07 for the following services:

- (i) individualized skills and socialization services;
- (ii) OHR in an individualized skills and socialization facility;
- (iii) OHR in a setting with SL or RSS is provided;
- (vi) RSS; and
- (v) SL.

(C) For services with rates that are variable by LON as specified in §355.723(b) of this chapter (relating to Reimbursement Methodology for Home and Community-based Services and Texas Home Living Programs), the weighted median attendant cost component is adjusted by modeled direct care hours to unit or direct care staff to individual ratios to determine attendant compensation rate components for each LON.

(D) If HHSC has insufficient cost data, the attendant compensation rate component will be established through a pro forma costing analysis as defined in §355.105(h) of this subchapter.

(4) The adopted attendant compensation rate component for nonparticipating contracts will be limited to available levels of appropriated state and federal funds as specified in §355.201 of this chapter (relating to Establishment and Adjustment of Reimbursement Rates for Medicaid).

(n) Determination of attendant compensation base rate for participating contracts. For each of the programs identified in subsection (a) of this section, the attendant compensation base rate is equal to the attendant compensation rate component for nonparticipating contracts from subsection (m) of this section.

(o) Determination of attendant compensation rate enhancements. HHSC will determine a per diem add-on payment for each enhanced attendant compensation level using data from sources such as cost reports, surveys, and/or other relevant sources and taking into consideration quality of care, labor market conditions, economic factors, and budget constraints. The attendant compensation rate enhancement add-ons will be determined on a per-unit-of-service basis applicable to each program or service. Add-on payments may vary by enhancement level.

(p) Enhanced attendant compensation. Contracts or component codes desiring to participate in the enhanced attendant compensation rate may request attendant compensation levels from an array of enhanced attendant compensation options and associated add-on payments determined in subsection (o) of this section during open enrollment.

(1) ICF/IID providers must select a single attendant compensation level for all contracts within a component code for the day habilitation and/or residential services they have selected for participation.

(2) HCS and TxHmL must select a single attendant compensation level for all contracts within a component code for the non-individualized skills and socialization services and/or individualized

skills and socialization services and/or residential services they have selected for participation.

(q) Granting attendant compensation rate enhancements. Eligible programs are divided into two populations for purposes of granting attendant compensation rate enhancements. The first population includes the PHC; DAHS; RC; CLASS--DSA; and DBMD programs, and the second population includes the ICF/IID; HCS; and TxHmL programs. Enhancements for the two populations are funded separately; funds intended for enhancements for the first population of programs will never be used for enhancements for the second population, and funds intended for enhancements for the second population of programs will never be used for enhancements for the first population. For each population of programs, HHSC divides all requested enhancements, after applying any enrollment limitations from subsection (v) of this section, into two groups: pre-existing enhancements, which providers request to carry over from the prior year, and newly-requested enhancements. Newly-requested enhancements may be enhancements requested by providers who were nonparticipants in the prior year or by providers who were participants in the prior year who seek additional enhancements. Using the process described herein separately for each population of programs, HHSC first determines the distribution of carry-over enhancements. If funds are available after the distribution of carry-over enhancements, HHSC determines the distribution of newly-requested enhancements. HHSC may not distribute newly-requested enhancements to providers owing funds identified for recoupment under subsection (t) of this section.

(1) For all programs and levels, HHSC determines projected units of service for contracts and/or component codes requesting each enhancement level and multiplies this number by the enhancement rate add-on amount associated with that enhancement level as determined in subsection (o) of this section.

(2) HHSC compares the sum of the products from paragraph (1) of this subsection to available funds.

(A) If the sum of the products is less than or equal to available funds, all requested enhancements are granted.

(B) If the sum of the products is greater than available funds, enhancements are granted beginning with the lowest level of enhancement and granting each successive level of enhancement until requested enhancements are granted within available funds. Based upon an examination of existing compensation levels and compensation needs, HHSC may grant certain enhancement options priority for distribution.

(r) Notification of granting of enhancements. Participating contracts and component codes are notified, in a manner determined by HHSC, as to the disposition of their request for attendant compensation rate enhancements.

(s) Total attendant compensation rate for participating providers. Each participating provider's total attendant compensation rate will be equal to the attendant compensation base rate from subsection (n) of this section plus any add-on payments associated with enhanced attendant compensation levels selected by and awarded to the provider during open enrollment.

(t) Spending requirements for participating contracts and component codes. HHSC will determine from the Attendant Compensation Report or cost report functioning as an Attendant Compensation Report, as specified in subsection (i) of this section and other appropriate data sources, the amount of attendant compensation spending per unit of service delivered. The provider's compliance with the spending requirement is determined based on the total attendant compensation spending as reported on the Attendant Compensation Report or cost

report functioning as an Attendant Compensation Report for each participating contract or component code. Compliance with the spending requirement is determined separately for each program specified in subsection (a) of this section, except for providers delivering services in both the HCS and TxHmL programs whose compliance is determined by combining both programs. HHSC will calculate recoupment, if any, as follows.

(1) The accrued attendant compensation revenue per unit of service is multiplied by 0.90 to determine the spending requirement per unit of service. The accrued attendant compensation spending per unit of service will be subtracted from the spending requirement per unit of service to determine the amount to be recouped. If the accrued attendant compensation spending per unit of service is greater than or equal to the spending requirement per unit of service, there is no recoupment.

(2) The amount paid for attendant compensation per unit of service after adjustments for recoupment must not be less than the amount determined for nonparticipating contracts or component codes in subsection (k) of this section.

(3) In cases where more than one enhancement level is in effect during the reporting period, the spending requirement will be based on the weighted average enhancement level in effect during the reporting period calculated as follows.

(A) Multiply the first enhancement level in effect during the reporting period by the most recently available, reliable Medicaid units of service utilization data for the time period the first enhancement level was in effect.

(B) Multiply the second enhancement level in effect during the reporting period by the most recently available, reliable Medicaid units of service utilization data for the time period the second enhancement level was in effect.

(C) Sum the products from subparagraphs (A) and (B) of this paragraph.

(D) Divide the sum from subparagraph (C) of this paragraph by the sum of the most recently available, reliable Medicaid units of service utilization data for the entire reporting period used in subparagraphs (A) and (B) of this paragraph.

(u) Notification of recoupment. The estimated amount to be recouped is indicated in the State of Texas Automated Information Reporting System (STAIRS), the online application for submitting cost reports and Attendant Compensation reports. STAIRS will generate an email to the entity contact, indicating that the provider's estimated recoupment is available for review. The entity contact is the provider's authorized representative per the signature authority designation form applicable to the provider's contract or ownership type. If a subsequent review by HHSC or audit results in adjustments to the Attendant Compensation Report or cost reporting, as described in subsection (i) of this section, that change the amount to be repaid, the provider will be notified by email to the entity contact that the adjustments and the adjusted amount to be repaid are available in STAIRS for review. HHSC, or its designee, will recoup any amount owed from a provider's vendor payment(s) following the date of the initial or subsequent notification. For the HCS and TxHmL programs, if HHSC, or its designee, is unable to recoup owed funds in an automated fashion, the requirements detailed under subsection (dd) of this section apply.

(v) Enrollment limitations. A provider will not be enrolled in the attendant compensation rate enhancement at a level higher than the level it achieved on its most recently available audited Attendant Compensation Report or cost report functioning as an Attendant Compensation Report. HHSC will notify a provider of its enrollment limitations

after HHSC has completed a financial examination of the report in accordance with §355.106 of this title (concerning Basic Objectives and Criteria for Audit and Desk Review of Cost Reports).

(1) Notification of enrollment limitations. The enrollment limitation level is indicated in STAIRS. STAIRS will generate an e-mail to the entity contact, indicating that the provider's enrollment limitation level is available for review.

(2) Informal reviews and formal appeals. The filing of a request for an informal review or formal appeal relating to a provider's most recently available audited Attendant Compensation Report or cost report functioning as an Attendant Compensation Report under §355.110 of this title (relating to Informal Reviews and Formal Appeals) does not stay or delay implementation of an enrollment limitation applied in accordance with the requirements of this subsection. If an informal review or formal appeal relating to a provider's most recently available audited Attendant Compensation Report or cost report functioning as an Attendant Compensation Report is pending at the time the enrollment limitation is applied, the result of the informal review or formal appeal shall be applied to the provider's enrollment retroactively to the beginning of the rate year to which the enrollment limitation was originally applied.

(3) New owners after a contract assignment or change of ownership that is an ownership change from one legal entity to a different legal entity. Enhancement levels for a new owner after a contract assignment or change of ownership that is an ownership change from one legal entity to a different legal entity will be determined in accordance with subsection (i) of this section. A new owner after a contract assignment or change of ownership that is an ownership-change from one legal entity to a different legal entity will not be subject to enrollment limitations based upon the prior owner's performance.

(4) New providers. A new provider's enrollment will be determined in accordance with subsection (h) of this section.

(w) Contract terminations. For contracted providers or component codes required to submit an Attendant Compensation Report due to a termination as described in subsection (i) of this section, HHSC, or its designee, will place a vendor hold on the payments of the contracted provider until HHSC receives an acceptable Attendant Compensation Report, as specified in subsection (i) of this section, and funds identified for recoupment from subsection (t) of this section are repaid to HHSC or its designee. Informal reviews and formal appeals relating to these reports are governed by §355.110 of this title. HHSC, or its designee, will recoup any amount owed from the provider's vendor payments that are being held. In cases where funds identified for recoupment cannot be repaid from the held vendor payments, the responsible entity from subsection (dd) of this section will be jointly and severally liable for any additional payment due to HHSC or its designee. Failure to repay the amount due or submit an acceptable payment plan within 60 days of notification will result in the recoupment of the owed funds from other HHSC contracts controlled by the responsible entity, placement of a vendor hold on all HHSC contracts controlled by the responsible entity, and will bar the responsible entity from enacting new contracts with HHSC until repayment is made in full. The responsible entity for these contracts will be notified as described in subsection (u) of this section prior to the recoupment of owed funds, placement of vendor hold on additional contracts, and barring of new contracts.

(x) Contract assignments. The following applies to contract assignments.

(1) Definitions. The following words and terms have the following meanings when used in this subsection.



(A) Assignee--A legal entity that assumes a Community Care contract through a legal assignment of the contract from the contracting entity as provided in 40 TAC §49.210 (relating to Contractor Change of Ownership or Legal Entity).

(B) Assignor--A legal entity that assigns its Community Care contract to another legal entity as provided in 40 TAC §49.210.

(C) Contract assignment--The transfer of a contract by one legal entity to another legal entity as provided in 40 TAC §49.210.

(i) Type One Contract Assignment--A contract assignment by which the assignee is an existing Community Care contract.

(ii) Type Two Contract Assignment--A contract assignment by which the assignee is a new Community Care contract.

(2) Participation after a contract assignment. Participation after a contract assignment is determined as follows:

(A) Type One Contract Assignments. For Type One contract assignments, the assignee's level of participation remains the same while the assignor's level of participation changes to the assignee's.

(B) Type Two Contract Assignments. For Type Two contract assignments, the level of participation of the assignor contract(s) will continue unchanged under the assignee contract(s).

(3) Reporting requirements. The assignee is responsible for the reporting requirements in subsection (i) of this section for any reporting period days occurring after the contract assignment effective date. If the contract assignment occurs during an open enrollment period as defined in subsection (f) of this section, the owner recognized by HHSC, or its designee, on the last day of the enrollment period may request to modify the enrollment status of the contract in accordance with subsection (g) of this section.

(4) Vendor holds. For contracted providers required to submit an Attendant Compensation Report due to contract assignment, as described in subsection (i) of this section, HHSC, or its designee, will place a vendor hold on the payments of the existing contracted provider until HHSC receives an acceptable Attendant Compensation Report, as specified in subsection (i) of this section, and until funds identified for recoupment from subsection (t) of this section are repaid to HHSC or its designee. HHSC, or its designee, will recoup any amount owed from the provider's vendor payments that are being held. In cases where funds identified for recoupment cannot be repaid from the held vendor payments, the responsible entity from subsection (dd) of this section will be jointly and severally liable for any additional payment due to HHSC or its designee. Failure to repay the amount due within 60 days of notification will result in the recoupment of the owed funds from other HHSC contracts controlled by the responsible entity, placement of a vendor hold on all HHSC contracts controlled by the responsible entity, and will bar the responsible entity from enacting new contracts with HHSC until repayment is made in full. The responsible entity for these contracts will be notified, as described in subsection (u) of this section, prior to the recoupment of owed funds, placement of vendor hold on additional contracts, and barring of new contract.

(y) Voluntary withdrawal. Participating contracts or component codes wishing to withdraw from the attendant compensation rate enhancement must notify HHSC in writing by certified mail and the request must be signed by an authorized representative as designated per the HHSC signature authority designation form applicable to the provider's contract or ownership type. The requests will be effective the first of the month following the receipt of the request. Contracts or component codes voluntarily withdrawing must remain nonpartici-

pants for the remainder of the rate year. Providers whose contracts are participating as part of a component code must request withdrawal of all the contracts in the component code.

(z) Adjusting attendant compensation requirements. Providers that determine that they will not be able to meet their attendant compensation requirements may request to reduce their attendant compensation requirements and associated enhancement payment to a lower participation level by submitting a written request to HHSC by certified mail, and the request must be signed by an authorized representative as designated per the HHSC signature authority designation form applicable to the provider's contract or ownership type. These requests will be effective the first of the month following the receipt of the request. Providers whose contracts are participating as part of a component code must request the same reduction for all of the contracts in the component code.

(aa) All other rate components. All other rate components will continue to be calculated as specified in the program-specific reimbursement methodology and will be uniform for all providers.

(bb) Failure to document spending. Undocumented attendant compensation expenses will be disallowed and will not be used in the determination of the attendant compensation spending per unit of service in subsection (t) of this section.

(cc) Appeals. Subject matter of informal reviews and formal appeals is limited as per §355.110 of this title.

(dd) Responsible entities. The contracted provider, owner, or legal entity which received the attendant compensation rate enhancement is responsible for the repayment of the recoupment amount.

(1) HCS and TxHmL providers required to repay enhancement funds will be jointly and severally liable for any repayment.

(2) Failure to repay the amount due or submit an acceptable payment plan within 60 days of notification will result in placement of a vendor hold on all HHSC contracts controlled by the responsible entity.

(ee) Manual Repayment. For the HCS and TxHmL programs, if HHSC, or its designee, is unable to recoup owed funds using an automated system, providers will be required to repay some or all of the enhancement funds to be recouped through a check, money order, or other non-automated method. Providers will be required to submit the required repayment amount within 60 days of notification.

(ff) Determination of compliance with spending requirements in the aggregate.

(1) Definitions. The following words and terms have the following meanings when used in this subsection.

(A) Commonly owned corporations--two or more corporations where five or fewer identical persons who are individuals, estates, or trusts own greater than 50 percent of the total voting power in each corporation.

(B) Entity--a parent company, sole member, individual, limited partnership, or group of limited partnerships controlled by the same general partner.

(C) Combined entity--one or more commonly owned corporations and one or more limited partnerships where the general partner is controlled by the same identical persons as the commonly owned corporation(s).

(D) Control--greater than 50 percent ownership by the entity.

(2) Aggregation. For an entity, for two or more commonly owned corporations, or for a combined entity that controls more than

one participating contract or component code in a program (with HCS and TxHmL considered a single program), compliance with the spending requirements detailed in subsection (t) of this section can be determined in the aggregate for all participating contracts or component codes in the program controlled by the entity, commonly owned corporations, or combined entity at the end of the rate year, the effective date of the change of ownership of its last participating contract or component code in the program, or the effective date of the termination of its last participating contract or component code in the program rather than requiring each contract or component code to meet its spending requirement individually. Corporations that do not meet the definitions under paragraph (1)(A) - (C) of this subsection are not eligible for aggregation to meet spending requirements.

(A) **Aggregation Request.** To exercise aggregation, the entity, combined entity, or commonly owned corporations must submit an aggregation request in a manner prescribed by HHSC at the time each Attendant Compensation Report or cost report is submitted. In limited partnerships in which the same single general partner controls all the limited partnerships, the single general partner must make this request. Other such aggregation requests will be reviewed on a case-by-case basis.

(B) **Frequency of Aggregation Requests.** The entity, combined entity, or commonly owned corporations must submit a separate request for aggregation for each reporting period.

(C) **Ownership changes or terminations.** For the ICF/IID, HCS, TxHmL, DAHS, RC, and DBMD programs, contracts or component codes that change ownership or terminate effective after the end of the applicable reporting period, but prior to the determination of compliance with spending requirements as per subsection (t) of this section, are excluded from all aggregate spending calculations. These contracts' or component codes' compliance with spending requirements will be determined on an individual basis, and the costs and revenues will not be included in the aggregate spending calculation.

(gg) **Conditions of participation for ICF/IID day habilitation and HCS/TxHmL individualized skills and socialization services.** The following conditions of participation apply to each ICF/IID, HCS, and TxHmL provider specifying its wish to have day habilitation services or individualized skills and socialization services participate in the attendant compensation rate enhancement.

(1) A provider who provides day habilitation or individualized skills and socialization services in-house or who contracts with a related party to provide day habilitation or individualized skills and socialization services will report job trainer and job coach compensation and hours on the required cost report items (e.g., hours, salaries and wages, payroll taxes, employee benefits/insurance/workers' compensation, contract labor costs, and personal vehicle mileage reimbursement). Day habilitation costs cannot be combined and reported in one cost report item.

(2) A provider who contracts with a non-related party to provide day habilitation or individualized skills and socialization services will report its payments to the contractor in a single cost report item as directed in the instructions for the cost report or Attendant Compensation Report as described in subsection (i)(3) and (4) of this section. HHSC will allocate 50 percent of reported payments to the attendant compensation cost area for inclusion with other allowable day habilitation or individualized skills and socialization services attendant costs in order to determine the total attendant compensation spending for day habilitation or individualized skills and socialization services as described in subsection (t) of this section.

(3) The provider must ensure access to any and all records necessary to verify information submitted to HHSC on Attendant Compensation Reports and cost reports functioning as an Attendant Compensation Report.

(4) HHSC will require each ICF/IID, HCS, and TxHmL provider specifying their wish to have day habilitation or individualized skills and socialization services participate in the attendant compensation rate enhancement to certify during the enrollment process that it will comply with the requirements of paragraphs (1) - (3) of this subsection.

(hh) **New contracts within existing component codes.** For ICF/IID, HCS, and TxHmL, new contracts within existing component codes will be assigned a level of participation equal to the existing component code's level of participation effective on the start date of the contract as recognized by HHSC or its designee.

(ii) **Disclaimer.** Nothing in these rules should be construed as preventing providers from compensating attendants at a level above that funded by the enhanced attendant compensation rate.

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

Filed with the Office of the Secretary of State on August 9, 2023.

TRD-202302910

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Texas Health and Human Services Commission

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Proposal publication date: July 7, 2023

For further information, please call: (512) 867-7817



## SUBCHAPTER C. REIMBURSEMENT METHODOLOGY FOR NURSING FACILITIES

### 1 TAC §355.304, §355.308

The Texas Health and Human Services Commission (HHSC) adopts new rule §355.304, concerning Direct Care Staff Spending Requirement on or after September 1, 2023, and an amendment to §355.308, concerning Direct Care Staff Rate Component. Section 355.304 and §355.308 are adopted with changes to the proposed text as published in the July 7, 2023, issue of the *Texas Register* (48 TexReg 3577). These rules will be republished.

#### BACKGROUND AND JUSTIFICATION

The purpose of the adoption is to implement the 2024-25 General Appropriations Act (GAA), House Bill 1, 88th Legislature, Regular Session, 2023 (Article II, Health and Human Services Commission, Rider 24). Rider 24 provides appropriations for rate increases for nursing facilities. Nursing facilities must report to HHSC on their biennial cost report information regarding the use of these funds, including information related to efforts to improve or maintain client care and quality of services, and to demonstrate that at least 90 percent of the funds were expended for the purpose of direct care staff wages or benefits. This new rule operationalizes the rider requirements to enable nursing facilities to receive increased reimbursement rates. The adoption also amends §355.308, related to the Direct Care Staff Rate Component.

HHSC is modifying the adopted amendments to lower the benchmark for the base rate calculation as described in detail in the comments and response summary section below. HHSC is modifying the adopted rule to reflect a 70 percent threshold for the direct care base rate spending floor instead of the 90 percent in the original proposal. Furthermore, HHSC is lowering the spending requirement in the direct care staff enhancement program by changing the direct care spending floor to 70 percent of direct care revenues from the current 85 percent requirement. HHSC is making this change upon adoption to align spending requirements related to the direct care rate increases in new §355.304 and the direct care staff enhancement program in §355.308.

The amendment to §355.308 maintains the deleted provisions related to request for revision report, the request for recalculation, and references to reinvestment.

## COMMENTS

The 21-day comment period ended July 28, 2023.

During this period, HHSC received comments regarding the proposed rules from approximately 400 commenters from the following organizations: Amarillo Center for Skilled Care; Amistad Nursing & Rehabilitation Center; Arbor Hills Rehabilitation and Healthcare Center; Beaumont Nursing and Rehab; Beaumont Nursing and Rehabilitation; Belterra Health & Rehabilitation Center; Bertram Nursing Home & Rehabilitation Center; Big Spring Center For Skilled Care; Bluebonnet Nursing and Rehabilitation; Brazos Healthcare Center; Bremond Nursing & Rehab Center; Brenham Nursing & Rehabilitation Center; Brentwood Terrace Nursing and Rehabilitation Center; Briarcliff Skilled Nursing Facility; Bridgecrest Rehabilitation Suites; Broadmoor Medical Lodge; Brodie Ranch Nursing & Rehabilitation Center; Brownfield Rehabilitation and Care Center; Brownwood Nursing & Rehabilitation; Buena Vida Nursing and Rehabilitation Center; Canton Oaks; Caprock Healthcare; Care Inn of La Grange; Castle Pines Health and Rehabilitation; Cedar Creek Nursing and Rehabilitation Center; Cherokee Rose Nursing and Rehabilitation; Christian Care Center; Cityview Nursing & Rehabilitation Center; Coalition of Independent Nursing Home Providers; Concho Health & Rehabilitation Center; Country View Nursing and Rehabilitation; Crestview Healthcare Residence; Crimson Heights Health and Wellness; Cross Timbers Rehabilitation & Healthcare Center; Crossroads Nursing and Rehabilitation; De Leon Nursing and Rehabilitation Center; Decatur Medical Lodge; Devine Health and Rehabilitation; Diamond Care Health Services; Duncanville Healthcare and Rehabilitation Center; Eagle Pass Nursing & Rehabilitation; Emerald Hills Rehabilitation and Healthcare Center; Ensign Services, Inc.; Five Points Nursing and Rehabilitation; Five Points-DeSoto; Flatonia Healthcare Center; Fortress Nursing and Rehabilitation; Franklin Nursing Home; Georgia Manor Nursing and Rehabilitation; Graham Oaks Care Center; Granbury Care Center; Grapevine Medical Lodge; Greenbrier Healthcare Center; Greenbrier Nursing & Rehabilitation Center; Greenhill Villas; Groveton Nursing Home; Hays Nursing and Rehabilitation Center; Health Services Management; Heritage at Longview; Heritage at Turner Park Nursing & Rehab; Heritage House Nursing and Rehabilitation; Heritage Place; Hillside Heights Rehabilitation; HMG Healthcare, LLC; Holiday Nursing & Rehab; Homestead of Sherman Nursing & Rehab; Huebner Creek Health and Rehabilitation Center; Human Resource Coordinator; Human Resource of River City Care Center; Keeneland Nursing & Rehabilitation; Kemp Care Center; Kerens Care Center; Kingsland Hills Care Center; Leading Age of Texas, La

Hacienda de Paz Rehab & Care Center; La Vida Serena Nursing & Rehabilitation; Labahia Nursing and Rehabilitation Center; Lake Hills Healthcare; Lake Lodge Nursing & Rehabilitation; Lakeview Rehab & Healthcare Center; Lampstand Nursing and Rehabilitation; Las Ventanas de Socorro; Leading Age of Texas; Longmeadow Healthcare Center; Lubbock Health Care Center; M Chest Pharmacies; Madisonville Care Center; Mansfield Medical Lodge; Marbridge Villa; Marine Creek Nursing & Rehabilitation; Matagorda Nursing and Rehabilitation Center; McLean Care Center; Memphis Convalescent Center; Mesa Vista Health; Mission Ridge Rehabilitation & Nursing Center; Mission Valley Nursing and Transitional Care; Mountain View Health and Rehabilitation; Navasota Nursing and Rehabilitation; Nexion Health; Normandy Terrace Healthcare & Rehabilitation; North Las Vegas Care Center; North Park Health and Rehabilitation Center; Northeast Rehabilitation and Healthcare Center; Northgate Health and Rehabilitation Center; NorthStar Ranch; Oakmont Healthcare & Rehabilitation; Oasis Nursing & Rehabilitation Center; Paradigm at Kountze; Paradigm at the Prairies; Paradigm Health Care Services; Park Highlands Nursing & Rehabilitation; Peach Tree Place; Pecan Creek Healthcare; Pecan Manor Nursing & Rehabilitation; Pine Tree Lodge; Pleasant Springs Healthcare; Port Lavaca Nursing & Rehabilitation Center; Priority Management Group; Providence Park Rehabilitation and Skilled Nursing; Regency Integrated Health Services; Regency Integrated Healthcare; Renaissance Rehabilitation and Healthcare Center; Reunion Plaza Skilled Nursing; Ridgmar Medical Lodge; River City Care Center; Robstown Nursing & Rehabilitation; Rock Creek Health and Rehabilitation; San Pedro Manor; San Saba Rehabilitation and Nursing; Sandy Lake Rehabilitation & Care Center; Seven Oaks; Shady Oak Nursing and Rehabilitation Center; Shiner Nursing and Rehabilitation Center; Sienna Nursing and Rehabilitation; Skilled Care of Mexia; Slaton Care Center; Solidago Health & Rehabilitation; South Place Rehabilitation & Skilled Nursing; Spanish Hills Wellness Suites; Sterling Oaks Rehabilitation; Stonegate Senior Living; Summit LTC Management; Summit Nursing & Rehab of San Augustine; Sunflower Park Healthcare; Sunrise Nursing & Rehab Center; Terra Bella Health and Wellness; Texas Healthcare Association; Texoma Healthcare Center; The Arbors Healthcare and Rehabilitation; The Atrium of Bellmead; The Brazos of Waco; The Courtyards at Pasadena; The Hills Nursing and Rehabilitation; The Meadows Health & Rehabilitation Center; The Park in Plano; The Pavilion at Creekwood; The Rehabilitation & Wellness Centre of Dallas, LLC; The Rio at Mission Trails; Touchstone Communities; Treemont Healthcare; Trinity Healthcare, LLC; Twilight Home Nursing & Rehabilitation; Twin Oaks Nursing & Rehabilitation Center; Twin Pines North Nursing and Rehabilitation; Vidor Health and Rehabilitation; Villa Haven Health and Rehabilitation; Villa Residential Care of Wolfforth; Village Creek Rehabilitation & Nursing Center; Walnut Springs Health & Rehabilitation; Weatherford Healthcare Center; Wellington Care Center; Westward Trails Nursing and Rehabilitation; Whispering Pines Lodge; Willow Springs Health & Rehabilitation; Windsor Arbor View; Windsor Calallen; Windsor Nursing and Rehabilitation Center.

A summary of comments relating to §355.304 and HHSC's responses follows:

Comment: Several commenters expressed opposition to the direct care staff base rate spending floor as proposed in the rule. Commenters expressed concerns about setting a spending threshold on the direct care component of the rate, as none exists today nor is required, but recognized the need for a

benchmark to compare the rate increase to ensure that 90 percent is spent on wages. Commenters said this benchmark should be noted as only a measurement tool, and no higher than 70 percent. One commenter suggested a benchmark of 65 percent.

Response: HHSC agrees to modify the spending requirement such that the direct care staff base rate spending floor in §355.304(e)(1) will be calculated as 70 percent of the Medicaid fee-for-service and managed care revenues proportional to the direct care base rates in effect on August 31, 2023. HHSC made a clarifying modification to §355.304(e)(3) so that it clarifies a provider will be held to 90 percent of revenues proportional to the direct care rate increases effective on September 1, 2023.

Comment: Several commenters asked to modify the definition of responsible entity in §355.304(b)(4) to not include "new owner following a change of ownership."

Response: HHSC agrees and made the change. HHSC's current processes ensures the responsible entity (the contracted provider, owner, or legal entity that received the revenue) is required to submit a report to "demonstrate that at least 90 percent of the funds were expended for the purpose of direct care staff wages or benefits" and the funds will be recouped from the responsible entity who does not utilize the funds in accordance with Rider 24.

Comment: Multiple commenters expressed that the spending requirement in the proposed rule is beyond the scope of Rider 24 and has no legislative basis.

Response: HHSC disagrees and declines to make the change. Holding providers to a base rate spending floor is necessary to meet the Rider's intention that HHSC "shall only expend funds...to provider reimbursement rate increases in a manner that will increase the wages and benefits of direct care staff" and that "at least 90 percent of the funds are expended for the benefit of direct care staff wages." A base rate spending floor establishes a baseline comparison of direct care expenditures and revenue that allows HHSC to understand the proportion of expenditures spent on direct care using the revenue associated with the direct care rate component in effect on August 31, 2023. Calculation of the direct care spending floor allows HHSC to evaluate whether providers increased their direct spending using the revenue associated with the direct care rate increases implemented on September 1, 2023, relative to the expenditures already being spent on direct care using the revenue from the direct care rate component prior to the increase.

Comment: Multiple commenters stated the rule contemplates a recoupment process, but Rider 24 simply has a biennial reporting requirement for facilities. Commenters say the recoupment process described in §355.304(e) was not contemplated by the Legislature.

Response: Rider 24 directs HHSC to "implement the rate increases in a manner that will enable HHSC to ensure that at least 90 percent of the funds are expended for the benefit of direct care staff wages and benefits and shall return to the Comptroller of Public Accounts any amount recouped from a provider who does not utilize the funds in accordance with that purpose." The Rider also provides that the providers will submit biennial cost reports "to demonstrate that at least 90 percent of the funds were expended for the purpose of direct care staff wages or benefits." From these two sentences in the Rider, HHSC understands the legislature's intent to be that HHSC shall recoup funds from any

provider who fails to meet spending to support direct care staff. No changes were made in response to this comment.

Comment: One commenter encourages HHSC to clarify requirements in §355.304(h) regarding the responsibilities of the prior and new owners when a facility undergoes a change of ownership.

Response: HHSC agrees and modified §355.304(h) to clarify the prior owner must submit a report covering the period from the beginning of the rate year to the date recognized by HHSC or its designee as the ownership-change effective date to meet reporting requirements under subsection (f) of this section, and the new owner is responsible for the reporting requirements for any reporting period days after the change of ownership effective date to the end of the rate year.

Comment: One commenter appreciates the inclusion of an aggregation component under §355.304(j) but is concerned that the spending requirement does not take into account regional cost variation and will require providers to shift spending to direct care from non-direct care costs. The commenter encourages HHSC to provide facility-specific individual detail spending performance to providers to allow them to make adjustments at the facility level if requirements are not met.

Response: Each combined entity or corporation owning multiple facilities may choose to aggregate their spending across multiple facilities within an entity for the purpose of meeting spending requirements in §355.304. HHSC will provide worksheets that allow a provider to calculate anticipated expenditures and revenue so the provider can ensure compliance with the spending requirements in the rule. HHSC acknowledges that some providers may need to adjust their spending to meet the rule requirements but believes these requirements are necessary to ensure Rider 24 appropriations are spent for the benefit of direct care staff compensation. No changes were made in response to this comment.

Comment: One commenter reiterated concerns provided during the public rate hearing on July 11, 2023, regarding the allocation of the appropriations provided under Rider 24 to the direct care rate component for each RUG group will result in a loss of total base rate reimbursement for certain facilities compared to the total base rate for each RUG group in effect on August 31, 2023, plus the \$19.63 add-on.

Response: HHSC appreciates the comment related to the proposed rate increase. However, the rate adoption process for nursing facility rates proposed to be effective on September 1, 2023, is outside the scope of this rule proposal. No changes were made in response to this comment.

Comment: One commenter encourages HHSC to amend the rule to clarify that there is no requirement to meet the direct care base rate spending floor in subsection §355.304(e)(2), and that there is no penalty for not meeting the direct care base rate spending floor. Rather, the comments contends the direct care base rate spending floor is only established to calculate the direct care spending floor as described in §355.304(e)(3).

Response: HHSC disagrees and declines to make the change. The language in §355.304(e)(2) specifies there will be no recoupment associated with failure to meet the direct care base rate spending floor. Moreover, §355.304(e)(5) reiterates that at no time will HHSC recoup more than the rate increases established under this section.

Comment: One commenter encouraged HHSC to mitigate administrative burden when developing new reporting requirements and expressed appreciation for using existing reports to evaluate compliance.

Response: HHSC will seek to mitigate the administrative burden on providers as much as feasible in the implementation of this rule. No changes were made in response to this comment.

Comment: One commenter indicated references in §355.304(g)(1) incorrectly reference subsection (d) and subsection (e) instead of subsection (e) and subsection (f).

Response: HHSC agrees and will make the change.

A summary of comments relating to §355.308 and HHSC's responses follows:

Comment: Several commenters expressed opposition to increasing the direct care staff spending requirements in §355.308(o) to 90 percent as proposed but are supportive of a threshold of no higher than 70 percent. One commenter encourages HHSC to maintain the requirement at 85 percent.

Response: HHSC agrees to reduce the spending requirement in the Direct Care Staff Enhancement Program as specified in 355.308(o) from 85 percent to 70 percent to align the spending requirements in both §355.304 and §355.308 and reduce provider confusion and enhance compliance.

Comment: Several commenters oppose calculating the direct care base rate for staff enhancement using the most recent cost reports. Commenters say calculating the direct care base rate for staff enhancement using the most recent cost reports, and inflating by 1.07, will create a misalignment with the direct care rate used for staff enhancement versus the direct care rate component to be paid. If this is used for each new cost report without increased appropriations, commenters say the spending required to qualify for staff enhancement will become more and more difficult to meet.

Response: HHSC disagrees and declines to make a change. Section 355.308(k) provides the methodology for the methodological base rate and does not impact current rates being paid or appropriation levels to support the program. The current methodology references an initial database from the 2000 cost report. The proposed language replaces the reference from the 2000 cost report to the most recently audited database to better reflect providers' current costs when rebasing the methodological rate.

Comment: Several commenters expressed opposition to eliminating a limited provider's opportunity to submit a request for revision during the annual open enrollment period for the direct care staff enhancement program.

Response: HHSC disagrees and declines to make the change. The request for revision process allows a provider to overturn the provider's limitations by using unverified data, which could include unallowable costs. Because the rate enhancement program relies on a limited funding pool, the request for revision process enables a provider who regularly misses the provider's spending requirements to remain in the program and prevents a provider who meets program requirements from the opportunity to obtain a higher enhancement level.

#### STATUTORY AUTHORITY

The amendment and new section are adopted under Texas Government Code §531.033, which authorizes the Executive Com-

missioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32.

*§355.304. Direct Care Staff Spending Requirement on or after September 1, 2023.*

(a) Introduction. The Texas Health and Human Services Commission (HHSC) uses the methodology described in this section to establish rate increases to the direct care staff component base rate for nursing facility services while limiting the use of funds received by the provider through these increases. This section describes the spending requirements associated with receiving the rate increases and circumstances in which recoupments will be necessary for a provider's failure to meet those requirements.

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

(1) Direct care staff base rate--The direct care staff base rate is calculated in accordance with §355.308(k) of this chapter (relating to Direct Care Staff Rate Component).

(2) Direct care staff cost center--This cost center will include compensation for employee and contract labor Registered Nurses (RNs), including Directors of Nursing (DONs) and Assistant Directors of Nursing (ADONs); Licensed Vocational Nurses (LVNs), including DONs and ADONs; medication aides; and nurse aides performing nursing-related duties for Medicaid contracted beds.

(3) Rate year--The standard rate year begins on the first day of September and ends on the last day of August of the following year.

(4) Responsible entity--The contracted provider, owner, or legal entity that received the revenue to be recouped is responsible for the repayment of any recoupment amount.

(c) Eligibility. To receive and retain rate increases under this section, the provider must be contracted with HHSC or a managed care organization (MCO) to provide nursing facility services through the Medicaid program.

(d) Direct Care Staff Base Rate Increase. Effective September 1, 2023, HHSC will increase the direct care staff base rate for nursing facility services for each Resource Utilization Group (RUG), Version III (RUG-III) case-mix group by an amount that is proportional to the level of the direct care staff base rate for each RUG-III case-mix group in effect on August 31, 2023. The direct care staff base rate increases will be limited to available state and federal appropriated amounts provided for the direct care base rate increase. The direct care rate increase will be applied proportionally to the level of each nursing component payer group under the Texas-specific patient driven payment methodology once that methodology is implemented.

(e) Spending Requirements for providers. Providers are subject to a direct care staff cost center spending requirement with recoupment calculated as follows.

(1) At the end of the rate year, HHSC will calculate a direct care staff base rate spending floor by multiplying accrued Medicaid fee-for-service and managed care direct care staff revenues proportional to the direct care base rates effective on August 31, 2023 by 0.70, for each provider.

(2) Accrued allowable Medicaid direct care staff expenses for the rate year will be compared to the base rate spending floor from paragraph (1) of this subsection. If the base rate spending floor is less than the accrued allowable Medicaid direct care staff expenses, HHSC or its designee will notify the provider as specified in subsection (g) of this section. There will be no recoupment associated with a provider's failure to meet the direct care base rate spending floor specified in this paragraph.

(3) At the end of the rate year, HHSC will calculate the direct care spending floor by multiplying accrued Medicaid fee-for-service and managed care direct care staff revenues proportional to the direct care staff rate increases specified under subsection (d) of this section by 0.90 and the direct care staff base rate spending floor as specified in paragraph (1) of this subsection.

(4) Accrued allowable Medicaid direct care staff expenses for the rate year will be compared to the total direct care staff spending floor from paragraph (3) of this subsection. If the direct care spending floor is less than the accrued allowable Medicaid direct care staff expenses, HHSC or its designee will recoup the difference between the direct care spending floor and the accrued allowable Medicaid direct care staff expenses from providers whose Medicaid direct care staff spending is less than their direct care spending floor.

(5) At no time will a provider's direct care rates after recoupment be less than the direct care base rates in effect prior to the direct care staff base rate increase established under this section.

(6) For participants in the direct care staff enhancement program, HHSC will calculate spending requirement as specified under §355.308 of this subchapter.

(f) Reporting Requirements. Providers receiving the direct care rate increases established under this section must report their direct care revenues and spending to HHSC or its designee in a manner and frequency prescribed by HHSC. HHSC will use cost reports or staffing and compensation reports (accountability reports) requested to comply with the direct care staff enhancement program as specified in §355.308 of this subchapter to meet the requirements of this section if applicable. Providers must also report information related to the use of funds, including information related to efforts to improve or maintain client care and quality of services on their biennial cost reports, as specified by HHSC. All reports must be completed in accordance with the provisions of §355.102 of this chapter (relating to General Principles of Allowable and Unallowable Costs), §355.103 of this chapter (relating to Specifications for Allowable and Unallowable Costs), §355.104 of this chapter (relating to Revenues), and §355.105 of this chapter (relating to General Reporting and Documentation Requirements, Methods, and Procedures) and may be reviewed or audited in accordance with §355.106 of this chapter (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports). All reports must be completed by preparers who have attended the required nursing facility cost report training, as per §355.102(d) of this chapter.

(g) Notification of recoupment, appeals, and repayment requirements.

(1) The estimated amount to be recouped for a provider's failure to meet spending requirements as specified under subsection (e) of this section will be indicated in the State of Texas Automated Information and Reporting System (STAIRS) or successor system. STAIRS will generate an email to the entity contact, indicating that the facility's estimated recoupment is available for review. If a subsequent review by HHSC results in additional adjustments to the report, as described in subsection (f) of this section, that results in a revised recoupment amount, HHSC will notify the provider's entity contact via email of

both the report adjustments and revised recoupment amount are available in STAIRS for review.

(2) Informal reviews and formal appeals relating to these reporting requirements in subsection (f) of this section are governed by §355.110 of this chapter (relating to Informal Reviews and Formal Appeals).

(3) HHSC or its designee will recoup any amount owed from the facility's vendor payments that are being held following the initial or subsequent notification date. In cases where funds identified for recoupment cannot be repaid from the held vendor payments, the responsible entity from subsection (b) of this section will be jointly and severally liable for any additional payment due to HHSC or its designee. Failure to repay the amount due or submit an acceptable payment plan within 60 days of notification will result in the recoupment of the owed funds from other Medicaid contracts controlled by the responsible entity, placement of a vendor hold on all Medicaid contracts controlled by the responsible entity, and barring of new contracts. The vendor hold will bar the responsible entity from receiving any new contracts with HHSC or its designees until repayment is made in full. The responsible entity for these contracts will be notified as described in paragraph (1) of this subsection prior to the recoupment of owed funds, placement of vendor hold, and barring of new contracts.

(h) Change of ownership. When there is a change of ownership before the end of a rate year, the prior owner must submit a report covering the period from the beginning of the rate year to the date recognized by HHSC or its designee as the ownership-change effective date to meet reporting requirements under subsection (f) of this section. The new owner may be responsible for the reporting requirements in subsection (f) of this section for any reporting period days after the change of ownership effective date to the end of the rate year as specified by HHSC or its designee.

(i) Vendor hold. HHSC or its designee will place on hold the vendor payments for any participating facility that does not submit a timely report as described in subsection (f) of this section in accordance with §355.403 of this subchapter (relating to Vendor Hold).

(j) Aggregation. For an entity, commonly owned corporation, or combined entity that controls more than one participating nursing facility contract, compliance with the spending requirements detailed in subsection (e) of this section can be determined in the aggregate for all nursing facility contracts controlled by the entity, commonly owned corporations, or combined entity in accordance with aggregation requirements specified in §355.308(aa) of this subchapter.

*§355.308. Direct Care Staff Rate Component.*

(a) Direct care staff cost center. This cost center will include compensation for employee and contract labor Registered Nurses (RNs), including Directors of Nursing (DONs) and Assistant Directors of Nursing (ADONs); Licensed Vocational Nurses (LVNs), including DONs and ADONs; medication aides; and nurse aides performing nursing-related duties for Medicaid contracted beds.

(1) Compensation to be included for these employee staff types is the allowable compensation defined in §355.103(b)(1) of this title (relating to Specifications for Allowable and Unallowable Costs) that is reported as either salaries and/or wages (including payroll taxes and workers' compensation) or employee benefits. Benefits required by §355.103(b)(1)(A)(iii) of this title to be reported as costs applicable to specific cost report line items are not to be included in this cost center.

(2) Direct care staff who also have administrative duties not related to nursing must properly direct charge their compensation to each type of function performed based upon daily time sheets maintained throughout the entire reporting period.

(3) Nurse aides must meet the qualifications enumerated under 26 TAC §556.3 (relating to Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements) to be included in this cost center. Nurse aides include certified nurse aides and nurse aides in training.

(4) Contract labor refers to personnel for whom the contracted provider is not responsible for the payment of payroll taxes (such as FICA, Medicare, and federal and state unemployment insurance) and who perform tasks routinely performed by employees. Allowable contract labor costs are defined in §355.103(b)(3) of this title.

(5) For facilities receiving supplemental reimbursement for children with tracheostomies requiring daily care as described in §355.307(b)(3)(F) of this title (relating to Reimbursement Setting Methodology), staff required by 26 TAC §554.901(15)(C)(iii) (relating to Quality of Care) performing nursing-related duties for Medicaid contracted beds are included in the direct care staff cost center.

(6) For facilities receiving supplemental reimbursement for qualifying ventilator-dependent residents as described in §355.307(b)(3)(E) of this title, Registered Respiratory Therapists and Certified Respiratory Therapy Technicians are included in the direct care staff cost center.

(7) Nursing facility administrators and assistant administrators are not included in the direct care staff cost center.

(8) Staff members performing more than one function in a facility without a differential in pay between functions are categorized at the highest level of licensure or certification they possess. If this highest level of licensure or certification is not that of an RN, LVN, medication aide, or certified nurse aide, the staff member is not to be included in the direct care staff cost center but rather in the cost center where staff members with that licensure or certification status are typically reported.

(9) Paid feeding assistants are not included in the direct care staff cost center and are not to be counted toward the staffing requirements described in subsection (j) of this section. Paid feeding assistants are intended to supplement certified nurse aides, not to be a substitute for certified or licensed nursing staff.

(b) Rate year. The standard rate year begins on the first day of September and ends on the last day of August of the following year.

(c) Open enrollment. Open enrollment for the enhanced direct care staff rates will begin on the first day of July and end on the last day of that same July preceding the rate year for which payments are being determined. HHSC notifies providers of open enrollment by electronic mail (e-mail) to an authorized representative per the signature authority designation form applicable to the provider's contract or ownership type. If open enrollment has been postponed or cancelled, the Texas Health and Human Services Commission (HHSC) will notify providers by e-mail prior to the first day of July. Should conditions warrant, HHSC may conduct additional enrollment periods during a rate year.

(d) Enrollment contract amendment. An initial enrollment contract amendment is required from each facility choosing to participate in the enhanced direct care staff rate. Participating and nonparticipating facilities may request to modify their enrollment status (i.e., a nonparticipant can request to become a participant, a participant can request to become a nonparticipant, a participant can request to change its enhancement level) during any open enrollment period. Nonparticipants and participants requesting to increase their enrollment levels will be limited to requesting increases of three or fewer enhancement levels during any single open enrollment period unless such limits are waived by HHSC. Requests to modify a facility's

enrollment status during an open enrollment period must be received by HHSC by the last day of the open enrollment period as per subsection (c) of this section. If the last day of the open enrollment period falls on a weekend, a national holiday, or a state holiday, then the first business day following the last day of the open enrollment period is the final day the receipt of the enrollment contract amendment will be accepted. An enrollment contract amendment that is not received by the stated deadline will not be accepted. A facility from which HHSC has not received an acceptable request to modify their enrollment by the last day of the open enrollment period will continue at the level of participation in effect during the open enrollment period within available funds until the facility notifies HHSC in accordance with subsection (r) of this section that it no longer wishes to participate or until the facility's enrollment is limited in accordance with subsection (i) of this section. If HHSC determines that funds are not available to continue participation at the level of participation in effect during the open enrollment period, facilities will be notified as per subsection (dd) of this section. To be acceptable, an enrollment contract amendment must be completed according to instructions, signed by an authorized representative as per the HHSC signature authority designation form applicable to the provider's contract or ownership type, and be legible.

(e) New facilities. For purposes of this section, for each rate year a new facility is defined as a facility delivering its first day of service to a Medicaid recipient after the first day of the open enrollment period, as defined in subsection (c) of this section, for that rate year. Facilities that underwent an ownership change are not considered new facilities. For purposes of this subsection, an acceptable enrollment contract amendment is defined as a legible enrollment contract amendment that has been completed according to instructions, signed by an authorized representative as per the HHSC signature authority designation form applicable to the provider's contract or ownership type, and received by HHSC within 30 days of the notification to the facility by HHSC that such an enrollment contract amendment must be submitted. New facilities will receive the direct care staff base rate as determined in subsection (k) of this section with no enhancements. For new facilities specifying their desire to participate on an acceptable enrollment contract amendment, the direct care staff rate is adjusted as specified in subsection (l) of this section, effective on the first day of the month following receipt by HHSC of the acceptable enrollment contract amendment. If the granting of newly requested enhancements was limited as per subsection (j)(3) of this section during the most recent enrollment, enrollment for new facilities will be subject to that same limitation.

(f) Staffing and Compensation Report submittal requirements.

(1) Annual Staffing and Compensation Report. For services delivered on or before August 31, 2009, providers must file Staffing and Compensation Reports as follows. All participating facilities will provide HHSC, in a method specified by HHSC, an Annual Staffing and Compensation Report reflecting the activities of the facility while delivering contracted services from the first day of the rate year through the last day of the rate year. This report will be used as the basis for determining compliance with the staffing requirements and recoupment amounts as described in subsection (n) of this section, and as the basis for determining the spending requirements and recoupment amounts as described in subsection (o) of this section. Participating facilities failing to submit an acceptable Annual Staffing and Compensation Report within 60 days of the end of the rate year will be placed on vendor hold until such time as an acceptable report is received and processed by HHSC.

(A) When a participating facility changes ownership, the prior owner must submit a Staffing and Compensation Report covering the period from the beginning of the rate year to the date recognized by HHSC or its designee as the ownership-change effective date.

This report will be used as the basis for determining any recoupment amounts as described in subsections (n) and (o) of this section. The new owner will be required to submit a Staffing and Compensation Report covering the period from the day after the date recognized by HHSC or its designee as the ownership-change effective date to the end of the rate year.

(B) Participating facilities whose contracts are terminated either voluntarily or involuntarily must submit a Staffing and Compensation Report covering the period from the beginning of the rate year to the date recognized by HHSC or its designee as the contract termination date. This report will be used as the basis for determining any recoupment amounts as described in subsections (n) and (o) of this section.

(C) Participating facilities who voluntarily withdraw from participation as per subsection (r) of this section must submit a Staffing and Compensation Report within 60 days of the date of withdrawal as determined by HHSC, covering the period from the beginning of the rate year to the date of withdrawal as determined by HHSC. This report will be used as the basis for determining any recoupment amounts as described in subsections (n) and (o) of this section.

(D) Participating facilities whose cost report year coincides with the state of Texas fiscal year as per §355.105(b)(5) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures) are exempt from the requirement to submit a separate Annual Staffing and Compensation Report. For these facilities, their cost report will be considered their Annual Staffing and Compensation Report.

(2) For services delivered on September 1, 2009, and thereafter, cost reports as described in §355.105(b) of this title will replace the Staffing and Compensation Report with the following exceptions:

(A) For services delivered from September 1, 2009, to August 31, 2010, participating facilities may be required to submit Transition Staffing and Compensation Reports in addition to required cost reports. The Transition Staffing and Compensation Report reporting period will include those days in calendar years 2009 and 2010 not included in either the 2009 Staffing and Compensation report or the facility's 2010 cost report.

(B) When a participating facility changes ownership, the prior owner must submit a Staffing and Compensation Report covering the period from the beginning of the facility's cost reporting period to the date recognized by HHSC or its designee as the ownership-change effective date. This report will be used as the basis for determining any recoupment amounts as described in subsections (n) and (o) of this section. The new owner will be required to submit a cost report covering the period from the day after the date recognized by HHSC or its designee as the ownership-change effective date to the end of the facility's fiscal year.

(C) Participating facilities whose contracts are terminated either voluntarily or involuntarily must submit a Staffing and Compensation Report covering the period from the beginning of the facility's cost reporting period to the date recognized by HHSC or its designee as the contract termination date. This report will be used as the basis for determining any recoupment amounts as described in subsections (n) and (o) of this section.

(D) Participating facilities who voluntarily withdraw from participation as per subsection (r) of this section must submit a Staffing and Compensation Report within 60 days of the date of withdrawal as determined by HHSC, covering the period from the beginning of the facility's cost reporting period to the date of withdrawal

as determined by HHSC. This report will be used as the basis for determining any recoupment amounts as described in subsections (n) and (o) of this section. These facilities must still submit a cost report covering the entire cost reporting period. The cost report will not be used for determining any recoupment amounts.

(E) For new facilities as defined in subsection (e) of this section, the cost reporting period will begin with the effective date of participation in enhancement.

(F) Existing facilities which become participants in the enhancement as a result of the open enrollment process described in subsection (c) of this section on any day other than the first day of their fiscal year are required to submit a Staffing and Compensation Report with a reporting period that begins on their first day of participation in the enhancement and ends on the last day of the facility's fiscal year. This report will be used as the basis for determining any recoupment amounts as described in subsections (n) and (o) of this section. These facilities must still submit a cost report covering the entire cost reporting period. The cost report will not be used for determining any recoupment amounts.

(G) A participating provider that is required to submit a cost report or Attendant Compensation Report under this paragraph will be excused from the requirement to submit a report if the provider did not provide any billable services to DADS recipients during the reporting period.

(3) Other reports. HHSC may require other Staffing and Compensation Reports from all facilities as needed.

(4) Vendor hold. HHSC or its designee will place on hold the vendor payments for any participating facility that does not submit a timely report as described in paragraph (1) of this subsection, or for services delivered on or after September 1, 2009, a timely report as described in paragraph (2) of this subsection completed in accordance with all applicable rules and instructions. This vendor hold will remain in effect until HHSC receives an acceptable report.

(A) Participating facilities that do not submit an acceptable report completed in accordance with all applicable rules and instructions within 60 days of the due dates described in this subsection or, for cost reports, the due dates described in §355.105(b) of this title, will become nonparticipants retroactive to the first day of the reporting period in question and will be subject to an immediate recoupment of funds related to participation paid to the facility for services provided during the reporting period in question. These facilities will remain nonparticipants and recouped funds will not be restored until they submit an acceptable report and repay to HHSC, or its designee, funds identified for recoupment from subsections (n) and/or (o) of this section. If an acceptable report is not received within 365 days of the due date, the recoupment will become permanent and, if all funds associated with participation during the reporting period in question have been recouped by HHSC or its designee, the vendor hold associated with the report will be released.

(B) Participating facilities with an ownership change or contract termination that do not submit an acceptable report completed in accordance with all applicable rules and instructions within 60 days of the change in ownership or contract termination will become nonparticipants retroactive to the first day of the reporting period in question and will be subject to an immediate recoupment of funds related to participation paid to the facility for services provided during the reporting period in question. These facilities will remain nonparticipants and recouped funds will not be restored until they submit an acceptable report and repay to HHSC or its designee funds identified for recoupment from subsections (n) and/or (o) of this section. If an acceptable report is not received within 365 days of the change of ownership or



contract termination date, the recoupment will become permanent and if all funds associated with participation during the reporting period in question have been recouped by HHSC or its designee, the vendor hold associated with the report will be released.

(5) Provider-initiated amended accountability reports and cost reports functioning as Staffing and Compensation Reports. Reports must be received prior to the date the provider is notified of compliance with spending and/or staffing requirements for the report in question as per subsections (n) and/or (o) of this section.

(g) Report contents. Annual Staffing and Compensation Reports and cost reports functioning as Staffing and Compensation Reports will include any information required by HHSC to implement this enhanced direct care staff rate.

(h) Completion of Reports. All Staffing and Compensation Reports and cost reports functioning as Staffing and Compensation Reports must be completed in accordance with the provisions of §§355.102 - 355.105 of this title (relating to General Principles of Allowable and Unallowable Costs; Specifications for Allowable and Unallowable Costs; Revenues; and General Reporting and Documentation Requirements, Methods, and Procedures) and may be reviewed or audited in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports). Beginning with the state fiscal year 2002 report, all Staffing and Compensation Reports and cost reports functioning as Staffing and Compensation Reports must be completed by preparers who have attended the required nursing facility cost report training as per §355.102(d) of this title.

(i) Enrollment limitations. A facility will not be enrolled in the enhanced direct care staff rate at a level higher than the level it achieved on its most recently available, audited Staffing and Compensation Report or cost report functioning as its Staffing and Compensation Report. HHSC will notify a facility of its enrollment limitations (if any) prior to the first day of the open enrollment period.

(1) Notification of enrollment limitations. The enrollment limitation level is indicated in the State of Texas Automated Information Reporting System (STAIRS), the online application for submitting cost reports and accountability reports. STAIRS will generate an e-mail to the entity contact, indicating that the facility's enrollment limitation level is available for review. The entity contact is the provider's authorized representative per the signature authority designation form applicable to the provider's contract or ownership type.

(2) At no time will a facility be allowed to enroll in the enhancement program at a level higher than its current level of enrollment plus three additional levels unless otherwise instructed by HHSC.

(3) New owners after a change of ownership. Enhancement levels for a new owner after a change of ownership will be determined in accordance with subsection (y) of this section. A new owner will not be subject to enrollment limitations based upon the prior owner's performance. This exemption from enrollment limitations does not apply in cases where HHSC or its designee has approved a successor-liability-agreement that transfers responsibility from the former owner to the new owner.

(4) New facilities. A new facility's enrollment will be determined in accordance with subsection (e) of this section.

(j) Determination of staffing requirements for participants. Facilities choosing to participate in the enhanced direct care staff rate agree to maintain certain direct care staffing levels above the minimum staffing levels described in paragraph (1) of this subsection. In order to permit facilities the flexibility to substitute RN, LVN and aide (Medication Aide and nurse aide) staff resources and, at the same time, comply

with an overall nursing staff requirement, total nursing staff requirements are expressed in terms of LVN equivalent minutes. Conversion factors to convert RN and aide minutes into LVN equivalent minutes are based upon most recently available, reliable relative compensation levels for the different staff types.

(1) Minimum staffing levels. HHSC determines, for each participating facility, minimum LVN equivalent staffing levels as follows.

(A) Determine minimum required LVN equivalent minutes per resident day of service for various types of residents using time study data, cost report information, and other appropriate data sources.

(i) Determine LVN equivalent minutes associated with Medicare residents based on the data sources from this subparagraph adjusted for estimated acuity differences between Medicare and Medicaid residents.

(ii) Determine minimum required LVN equivalent minutes per resident day of service associated with each Resource Utilization Group (RUG-III) case mix group and additional minimum required minutes for Medicaid residents reimbursed under the RUG-III system who also qualify for supplemental reimbursement for ventilator care or pediatric tracheostomy care as described in §355.307 of this title (relating to Reimbursement Setting Methodology) based on the data sources from this subparagraph adjusted for acuity differences between Medicare and Medicaid residents and other factors.

(B) Based on most recently available, reliable utilization data, determine for each facility the total days of service by RUG-III group, days of service provided to Medicaid residents qualifying for Medicaid supplemental reimbursement for ventilator or tracheostomy care, total days of service for Medicare Part A residents in Medicaid-contracted beds, and total days of service for all other residents in Medicaid-contracted beds.

(C) Multiply the minimum required LVN equivalent minutes for each RUG-III group and supplemental reimbursement group from subparagraph (A) of this paragraph by the facility's Medicaid days of service in each RUG-III group and supplemental reimbursement group from subparagraph (B) of this paragraph and sum the products.

(D) Multiply the minimum required LVN equivalent minutes for Medicare residents by the facility's Medicare Part A days of service in Medicaid-contracted beds.

(E) Divide the sum from subparagraph (C) of this paragraph by the facility's total Medicaid days of service, with a day of service for a Medicaid RUG-III recipient who also qualifies for a supplemental reimbursement counted as one day of service, compare this result to the minimum required LVN-equivalent minutes for a RUG-III PD1 and multiply the lower of the two figures by the facility's other resident days of service in Medicaid-contracted beds.

(F) Sum the results of subparagraphs (C), (D) and (E) of this paragraph, divide the sum by the facility's total days of service in Medicaid-contracted beds, with a day of service for a Medicaid recipient who also qualifies for a supplemental reimbursement counted as one day of service. The results of these calculations are the minimum LVN equivalent minutes per resident day a participating facility must provide.

(G) In cases where the minimum required LVN-equivalent minutes per resident day of service associated with a RUG-III case mix group or supplemental reimbursement group change during the reporting period, the minimum required LVN-equivalent minutes for the RUG-III case mix group or supplemental reimbursement group for the

reporting period will be equal to the weighted average LVN-equivalent minutes in effect during the reporting period for that group calculated as follows:

(i) Multiply the first minimum required LVN equivalent minutes per resident day of service associated with the RUG-III case mix group or supplemental reimbursement group in effect during the reporting period by the most recently available, reliable Medicaid days of service utilization data for the time period the first minimum required LVN equivalent minutes were in effect.

(ii) Multiply the second minimum required LVN equivalent minutes per resident day of service associated with the RUG-III case mix group or supplemental reimbursement group in effect during the reporting period by the most recently available, reliable Medicaid days of service utilization data for the time period the second minimum required LVN equivalent minutes were in effect.

(iii) Sum the products from clauses (i) and (ii) of this subparagraph.

(iv) Divide the sum from clause (iii) of this subparagraph by the sum of the most recently available, reliable Medicaid days of service utilization data for the entire reporting period used in clauses (i) and (ii) of this subparagraph.

(2) Enhanced staffing levels. Facilities desiring to participate in the enhanced direct care staff rate are required to staff above the minimum requirements from paragraph (1) of this subsection. These facilities may request LVN-equivalent staffing enhancements from an array of LVN-equivalent enhanced staffing options and associated add-on payments during open enrollment under subsection (d) of this section.

(3) Granting of staffing enhancements. HHSC divides all requested enhancements, after applying any enrollment limitations from subsection (i) of this section, into two groups: pre-existing enhancements that facilities request to carry over from the prior year and newly-requested enhancements. Newly-requested enhancements may be enhancements requested by facilities that were nonparticipants in the prior year or by facilities that were participants in the prior year desiring to be granted additional enhancements. Using the process described herein, HHSC first determines the distribution of carry-over enhancements. If HHSC determines that funds are not available to carry over some or all pre-existing enhancements, facilities will be notified as per subsection (dd) of this section. If funds are available after the distribution of carry-over enhancements, HHSC then determines the distribution of newly requested enhancements. HHSC may not distribute newly requested enhancements to facilities owing funds identified for recoupment from subsections (n) and/or (o) of this section.

(A) HHSC determines projected Medicaid units of service for facilities requesting each enhancement option and multiplies this number by the rate add-on associated with that enhancement option as determined in subsection (l) of this section.

(B) HHSC compares the sum of the products from subparagraph (A) of this paragraph to available funds.

(i) If the product is less than or equal to available funds, all requested enhancements are granted.

(ii) If the product is greater than available funds, enhancements are granted beginning with the lowest level of enhancement and granting each successive level of enhancement until requested enhancements are granted within available funds. Based upon an examination of existing staffing levels and staffing needs, HHSC may grant certain enhancement options priority for distribution.

(4) Notification of granting of enhancements. Participating facilities are notified, in a manner determined by HHSC, as to the disposition of their request for staffing enhancements.

(5) In cases where more than one enhanced staffing level is in effect during the reporting period, the staffing requirement will be based on the weighted average enhanced staffing level in effect during the reporting period calculated as follows:

(A) Multiply the first enhanced staffing level in effect during the reporting period by the most recently available, reliable Medicaid days of service utilization data for the time period the first enhanced staffing level was in effect.

(B) Multiply the second enhanced staffing level in effect during the reporting period by the most recently available, reliable Medicaid days of service utilization data for the time period the second enhanced staffing level was in effect.

(C) Sum the products from subparagraphs (A) and (B) of this paragraph.

(D) Divide the sum from subparagraph (C) of this paragraph by the sum of the most recently available, reliable Medicaid days of service utilization data for the entire reporting period used in subparagraphs (A) and (B) of this paragraph.

(k) Determination of direct care staff base rate.

(1) Determine the sum of recipient care costs from the direct care staff cost center in subsection (a) of this section in all nursing facilities included in the most recently available Texas Nursing Facility Cost Report database (hereinafter referred to as the initial database).

(2) Adjust the sum from paragraph (1) of this subsection as specified in §355.108 of this title (relating to Determination of Inflation Indices) to inflate the costs to the prospective rate year.

(3) Divide the result from paragraph (2) of this subsection by the sum of recipient days of service in all facilities in the initial database and multiply the result by 1.07. The result is the average direct care staff base rate component for all facilities.

(4) For rates effective September 1, 2009 and thereafter, to calculate the direct care staff per diem base rate component for all facilities for each of the RUG-III case mix groups and for the default groups, divide each RUG-III index from §355.307(b)(3)(C) of this title (relating to Reimbursement Setting Methodology) by 0.9908, which is the weighted average Texas Index for Level of Effort (TILE) case mix index associated with the initial database, and then multiply each of the resulting quotients by the average direct care staff base rate component from paragraph (3) of this subsection.

(5) The direct care staff per diem base rates will be limited to available levels of appropriated state and federal funds as specified in §355.201 of this chapter. HHSC may also recommend adjustments to the rates in accordance with §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).

(l) Determine each participating facility's total direct care staff rate. Each participating facility's total direct care staff rate will be equal to the direct care staff base rate from subsection (k) of this section plus any add-on payments associated with enhanced staffing levels selected by and awarded to the facility during open enrollment. HHSC will determine a per diem add-on payment for each enhanced staffing level taking into consideration the most recently available, reliable data relating to LVN equivalent compensation levels.

(m) Staffing requirements for participating facilities. Each participating facility will be required to maintain adjusted LVN-equiv-

alent minutes equal to those determined in subsection (j) of this section. Each participating facility's adjusted LVN-equivalent minutes maintained during the reporting period will be determined as follows.

(1) Determine unadjusted LVN-equivalent minutes maintained. Upon receipt of the staffing and spending information described in subsection (f) of this section, HHSC will determine the unadjusted LVN-equivalent minutes maintained by each facility during the reporting period.

(2) Determine adjusted LVN-equivalent minutes maintained. Compare the unadjusted LVN-equivalent minutes maintained by the facility during the reporting period from paragraph (1) of this subsection to the LVN-equivalent minutes required of the facility as determined in subsection (j) of this section. The adjusted LVN-equivalent minutes are determined as follows:

(A) If the number of unadjusted LVN-equivalent minutes maintained by the facility during the reporting period is greater than or equal to the number of LVN-equivalent minutes required for the facility or less than the minimum LVN-equivalent minutes required for participation as determined in subsection (j)(1) of this section; the facility's adjusted LVN-equivalent minutes maintained is equal to its unadjusted LVN-equivalent minutes; or

(B) If the number of unadjusted LVN-equivalent minutes maintained by the facility during the reporting period is less than the number of LVN-equivalent minutes required of the facility, but greater than or equal to the minimum LVN-equivalent minutes required for participation as determined in subsection (j)(1) of this section, the following steps are performed.

(i) Determine what the facility's accrued Medicaid fee-for-service direct care revenue for the reporting period would have been if their staffing requirement had been set at a level consistent with the highest LVN-equivalent minutes that the facility actually maintained, as defined in subsection (j) of this section.

(ii) Determine the facility's adjusted accrued direct care revenue by multiplying the accrued direct care revenue from clause (i) of this subparagraph by 0.85.

(iii) Determine the facility's accrued allowable Medicaid fee-for-service direct care staff expenses for the rate year.

(iv) Determine the facility's direct care spending surplus for the reporting period by subtracting the facility's adjusted accrued direct care revenue from clause (ii) of this subparagraph from the facility's accrued allowable direct care expenses from clause (iii) of this subparagraph.

(v) If the facility's direct care spending surplus from clause (iv) of this subparagraph is less than or equal to zero, the facility's adjusted LVN-equivalent minutes maintained is equal to the unadjusted LVN-equivalent minutes maintained as calculated in paragraph (1) of this subsection.

(vi) If the facility's direct care spending surplus from clause (iv) of this subparagraph is greater than zero, the adjusted LVN-equivalent minutes maintained by the facility during the reporting period is set equal to the facility's direct care spending surplus from clause (iv) of this subparagraph divided by the per diem enhancement add-on as determined in subsection (l) of this section plus the unadjusted LVN-equivalent minutes maintained by the facility during the reporting period from paragraph (1) of this subsection according to the following formula: (Direct Care Spending Surplus/Per Diem Enhancement Add-on for One LVN-equivalent Minute) + Unadjusted LVN-equivalent Minutes.

(C) For adjusted LVN-equivalent minutes calculated on or after March 1, 2004, requirements relating to the minimum LVN-equivalent minutes required for participation in subparagraphs (A) and (B) of this paragraph do not apply.

(n) Staffing accountability. Participating facilities will be responsible for maintaining the staffing levels determined in subsection (j) of this section. HHSC will determine the adjusted LVN-equivalent minutes maintained by each facility during the reporting period by the method described in subsection (m) of this section. HHSC or its designee will recoup all direct care staff revenues associated with unmet staffing goals from participating facilities that fail to meet their staffing requirements during the reporting period.

(o) Spending requirements for participants. Participating facilities are subject to a direct care staff spending requirement with recoupment calculated as follows.

(1) Effective September 1, 2023, HHSC will complete calculations associated with the direct care rate increases and spending requirements in accordance with §355.304 of this subchapter (relating to Direct Care Staff Spending Requirement on or after September 1, 2023).

(2) At the end of the rate year, a spending floor will be calculated by multiplying accrued Medicaid fee-for-service and managed care direct care staff revenues by 0.70.

(3) Accrued allowable Medicaid direct care staff fee-for-service expenses for the rate year will be compared to the spending floor from paragraph (2) of this subsection. HHSC or its designee will recoup the difference between the spending floor and accrued allowable Medicaid direct care staff fee-for-service expenses from facilities whose Medicaid direct care staff spending is less than their spending floor.

(4) At no time will a participating facility's direct care rates after spending recoupment be less than the direct care base rates.

(p) Dietary and Fixed Capital Mitigation. Recoupment of funds described in subsection (o) of this section may be mitigated by high dietary and/or fixed capital expenses as follows.

(1) Calculate dietary cost deficit. At the end of the facility's rate year, accrued Medicaid dietary per diem revenues will be compared to accrued, allowable Medicaid dietary per diem costs. If costs are greater than revenues, the dietary per diem cost deficit will be equal to the difference between accrued, allowable Medicaid dietary per diem costs and accrued Medicaid dietary per diem revenues. If costs are less than revenues, the dietary cost deficit will be equal to zero.

(2) Calculate dietary revenue surplus. At the end of the facility's rate, accrued Medicaid dietary per diem revenues will be compared to accrued, allowable Medicaid dietary per diem costs. If revenues are greater than costs, the dietary per diem revenue surplus will be equal to the difference between accrued Medicaid dietary per diem revenues and accrued, allowable Medicaid dietary per diem costs. If revenues are less than costs, the dietary revenue surplus will be equal to zero.

(3) Calculate fixed capital cost deficit. At the end of the facility's rate year, accrued Medicaid fixed capital per diem revenues will be compared to accrued, allowable Medicaid fixed capital per diem costs as defined in §355.306(b)(2)(A) of this title (relating to Cost Finding Methodology). If costs are greater than revenues, the fixed capital cost per diem deficit will be equal to the difference between accrued, allowable Medicaid fixed capital per diem costs and accrued Medicaid fixed capital per diem revenues. If costs are less than revenues, the fixed capital cost deficit will be equal to zero. For purposes of this para-

graph, fixed capital per diem costs of facilities with occupancy rates below 85% are adjusted to the cost per diem the facility would have accrued had it maintained an 85% occupancy rate throughout the rate year.

(4) Calculate fixed capital revenue surplus. At the end of the facility's rate year, accrued Medicaid fixed capital per diem revenues will be compared to accrued, allowable Medicaid fixed capital per diem costs as defined in §355.306(b)(2)(A) of this title. If revenues are greater than costs, the fixed capital revenue per diem surplus will be equal to the difference between accrued Medicaid fixed capital per diem revenues and accrued, allowable Medicaid fixed capital per diem costs. If revenues are less than costs, the fixed capital revenue surplus will be equal to zero. For purposes of this paragraph, fixed capital per diem costs of facilities with occupancy rates below 85% are adjusted to the cost per diem the facility would have accrued had it maintained an 85% occupancy rate throughout the rate year.

(5) Facilities with a dietary per diem cost deficit will have their dietary per diem cost deficit reduced by their fixed capital per diem revenue surplus, if any. Any remaining dietary per diem cost deficit will be capped at \$2.00 per diem.

(6) Facilities with a fixed capital cost per diem deficit will have their fixed capital cost per diem deficit reduced by their dietary revenue per diem surplus, if any. Any remaining fixed capital per diem cost deficit will be capped at \$2.00 per diem.

(7) Each facility's recoupment, as calculated in subsection (o) of this section, will be reduced by the sum of that facility's dietary per diem cost deficit as calculated in paragraph (5) of this subsection and its fixed capital per diem cost deficit as calculated in paragraph (6) of this subsection.

(q) Adjusting staffing requirements. Facilities that determine that they will not be able to meet their staffing requirements from subsection (m) of this section may request a reduction in their staffing requirements and associated rate add-on. These requests will be effective on the first day of the month following approval of the request.

(r) Voluntary withdrawal. Facilities wishing to withdraw from participation must notify HHSC in writing by certified mail and the request must be signed by an authorized representative as designated per the HHSC signature authority designation form applicable to the provider's contract or ownership type. Facilities voluntarily withdrawing must remain nonparticipants for the remainder of the rate year. Facilities that voluntarily withdraw from participation will have their participation end effective on the date of the withdrawal, as determined by HHSC.

(s) Notification of recoupment based on Annual Staffing and Compensation Report or cost report. The estimated amount to be recouped is indicated in STAIRS. STAIRS will generate an e-mail to the entity contact, indicating that the facility's estimated recoupment is available for review. If a subsequent review by HHSC or audit results in adjustments to the Annual Staffing and Compensation Report or cost report as described in subsection (f) of this section that changes the amount to be repaid to HHSC or its designee, the facility will be notified by e-mail to the entity contact that the adjustments and the adjusted amount to be repaid are available in STAIRS for review. HHSC or its designee will recoup any amount owed from a facility's vendor payment(s) following the date of the initial or subsequent notification.

(t) Change of ownership and contract terminations. Facilities required to submit a Staffing and Compensation Report due to a change of ownership or contract termination as described in subsection (f) of this section will have funds held as per 26 TAC §554.210 (relating to Change of Ownership and Notice of Changes) until an acceptable

Staffing and Compensation Report is received by HHSC and funds identified for recoupment from subsections (n) and/or (o) of this section are repaid to HHSC or its designee. Informal reviews and formal appeals relating to these reports are governed by §355.110 of this title (relating to Informal Reviews and Formal Appeals). HHSC or its designee will recoup any amount owed from the facility's vendor payments that are being held. In cases where funds identified for recoupment cannot be repaid from the held vendor payments, the responsible entity from subsection (x) of this section will be jointly and severally liable for any additional payment due to HHSC or its designee. Failure to repay the amount due or submit an acceptable payment plan within 60 days of notification will result in the recoupment of the owed funds from other Medicaid contracts controlled by the responsible entity, placement of a vendor hold on all Medicaid contracts controlled by the responsible entity and will bar the responsible entity from receiving any new contracts with HHSC or its designees until repayment is made in full. The responsible entity for these contracts will be notified as described in subsection (s) of this section prior to the recoupment of owed funds, placement of vendor hold and barring of new contracts.

(u) Failure to document staff time and spending. Undocumented direct care staff and contract labor time and compensation costs will be disallowed and will not be used in the determination of direct care staff time and costs per unit of service.

(v) All other rate components. All other rate components will be calculated as specified in §355.307 of this title (relating to Reimbursement Setting Methodology) and will be uniform for all providers.

(w) Appeals. Subject matter of informal reviews and formal appeals is limited as per §355.110(a)(3) of this title (relating to Informal Reviews and Formal Appeals).

(x) Responsible entities. The contracted provider, owner, or legal entity that received the revenue to be recouped upon is responsible for the repayment of any recoupment amount.

(y) Change of ownership. Participation in the enhanced direct care staff rate confers to the new owner as defined in 26 TAC §554.210 (relating to Change of Ownership and Notice of Changes) when there is a change of ownership. The new owner is responsible for the reporting requirements in subsection (f) of this section for any reporting period days occurring after the change. If the change of ownership occurs during an open enrollment period as defined in subsection (c) of this section, then the owner recognized by HHSC or its designee on the last day of the enrollment period may request to modify the enrollment status of the facility in accordance with subsection (d) of this section.

(z) Contract cancellations. If a facility's Medicaid contract is cancelled before the first day of an open enrollment period as defined in subsection (c) of this section and the facility is not granted a new contract until after the last day of the open enrollment period, participation in the enhanced direct care staff rate as it existed prior to the date when the facility's contract was cancelled will be reinstated when the facility is granted a new contract, if it remains under the same ownership, subject to the availability of funding. Any enrollment limitations from subsection (i) of this section that would have applied to the cancelled contract will apply to the new contract.

(aa) Determination of compliance with spending requirements in the aggregate.

(1) Definitions. The following words and terms have the following meanings when used in this subsection.

(A) Commonly owned corporations--two or more corporations where five or fewer identical persons who are individuals, estates, or trusts control greater than 50 percent of the total voting power in each corporation.

(B) Entity--a parent company, sole member, individual, limited partnership, or group of limited partnerships controlled by the same general partner.

(C) Combined entity--one or more commonly owned corporations and one or more limited partnerships where the general partner is controlled by the same person(s) as the commonly owned corporation(s).

(D) Control--greater than 50 percent ownership by the entity.

(2) Aggregation. For an entity, commonly owned corporation, or combined entity that controls more than one participating nursing facility contract, compliance with the spending requirements detailed in subsection (o) of this section can be determined in the aggregate for all participating nursing facility contracts controlled by the entity, commonly owned corporations, or combined entity at the end of the rate year, the effective date of the change of ownership of its last participating NF contract, or the effective date of the termination of its last participating NF contract rather than requiring each contract to meet its spending requirement individually. Corporations that do not meet the definitions under paragraph (1)(A) - (C) of this subsection are not eligible for aggregation to meet spending requirements.

(A) Aggregation Request. To exercise aggregation, the entity, combined entity, or commonly owned corporations must submit an aggregation request, in a manner prescribed by HHSC, at the time each Staffing and Compensation Report or cost report is submitted. In limited partnerships in which the same single general partner controls all the limited partnerships, the single general partner must make this request. Other such aggregation requests will be reviewed on a case-by-case basis.

(B) Frequency of Aggregation Requests. The entity, combined entity, or commonly owned corporations must submit a separate request for aggregation for each reporting period.

(C) Ownership changes or terminations. Nursing facility contracts that change ownership or terminate effective after the end of the applicable reporting period, but prior to the determination of compliance with spending requirements as per subsection (o) of this section, are excluded from all aggregate spending calculations. These contracts' compliance with spending requirements will be determined on an individual basis and the costs and revenues will not be included in the aggregate spending calculation.

(bb) Medicaid Swing Bed Program for Rural Hospitals. When a rural hospital participating in the Medicaid swing bed program furnishes NF nursing care to a Medicaid recipient under 26 TAC §554.2326 (relating to Medicaid Swing Bed Program for Rural Hospitals), HHSC or its designee makes payment to the hospital using the same procedures, the same case-mix methodology, and the same RUG-III rates that HHSC authorizes for reimbursing NFs receiving the direct care staff base rate with no enhancement levels. These hospitals are not subject to the staffing and spending requirements detailed in this section.

(cc) Disclaimer. Nothing in these rules should be construed as preventing facilities from adding direct care staff in addition to those funded by the enhanced direct care staff rate.

(dd) Notification of lack of available funds. If HHSC determines that funds are not available to continue participation for facilities from which it has not received an acceptable request to modify their enrollment by the last day of an enrollment period as per subsection (d) of this section or to fund carry-over enhancements as per subsection (j)(3) of this section, HHSC will notify providers in a manner determined by HHSC that such funds are not available.

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

Filed with the Office of the Secretary of State on August 11, 2023.

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Texas Health and Human Services Commission

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Proposal publication date: July 7, 2023

For further information, please call: (512) 867-7817



## SUBCHAPTER E. COMMUNITY CARE FOR AGED AND DISABLED

### 1 TAC §355.513

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §355.513, concerning Reimbursement Methodology for the Deaf-Blind with Multiple Disabilities Waiver Program. Section 355.513 is adopted without changes to the proposed text as published in the July 7, 2023, issue of the *Texas Register* (48 TexReg 3588). This rule will not be republished.

#### BACKGROUND AND JUSTIFICATION

Title 42 Code of Federal Regulations §441.301(c)(4)(i) - (v), requires home and community-based settings in programs authorized by §1915(c) of the Social Security Act to have certain qualities, including being integrated into and supporting full access of individuals to the greater community. HHSC adopted rules in Title 26 Texas Administrative Code (TAC) Chapter 260 to implement individualized skills and socialization effective January 1, 2023.

The 2022-2023 General Appropriations Act (GAA), Senate Bill 1, 87th Legislature, Regular Session, 2021 (Article II, HHSC, Rider 23) authorized funding for the provision of individualized skills and socialization in the Home and Community-based Services (HCS), Texas Home Living (TxHmL), and Deaf-Blind with Multiple Disabilities (DBMD) programs. HHSC adopted rates for individualized skills and socialization based on the available appropriations, effective January 1, 2023.

The purpose of the adoption is to amend the reimbursement methodology for the DBMD Program to remove day habilitation services and establish rate methodologies for individualized skills and socialization services. The adopted amendment also clarifies the rate methodology for residential habilitation transportation, chore, and intervener services by replacing the "other direct care" cost area with an administration and facility cost area to align waiver rate methodology with other similar services.

#### COMMENTS

The 21-day comment period ended July 28, 2023.

During this period, HHSC received comments regarding the proposed rule from one commenter. A summary of comments relating to §355.513 and HHSC's responses follow:

Comment: One commenter asked HHSC to only consider amendments that will support and enhance the method by which these affected citizens receive reimbursement and not add to the difficulties this population faces.

Response: HHSC appreciates the comment received. HHSC believes these amendments ensure that an appropriate reimbursement rate methodology is used in the DBMD waiver program by establishing rate methodologies for individualized skills and socialization services and aligning the waiver rate methodology with other similar services.

#### STATUTORY AUTHORITY

The amendment is adopted under 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; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under Texas Human Resources Code Chapter 32.

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

Filed with the Office of the Secretary of State on August 8, 2023.

TRD-202302820

Karen Ray

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Texas Health and Human Services Commission

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Proposal publication date: July 7, 2023

For further information, please call: (512) 867-7817



## SUBCHAPTER F. REIMBURSEMENT METHODOLOGY FOR PROGRAMS SERVING PERSONS WITH MENTAL ILLNESS OR INTELLECTUAL OR DEVELOPMENTAL DISABILITY

### 1 TAC §355.723

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §355.723, concerning Reimbursement Methodology for Home and Community-Based Services and Texas Home Living Programs. Section 355.723 is adopted with changes to the proposed text as published in the July 7, 2023, issue of the *Texas Register* (48 TexReg 3591). This rule will be republished.

#### BACKGROUND AND PURPOSE

Title 42, Code of Federal Regulations, §441.301(c)(4)(i) - (v), requires home and community-based settings in programs authorized by §1915(c) of the Social Security Act to have certain qualities, including being integrated into and supporting full access of individuals to the greater community. HHSC adopted rules in Title 26 Texas Administrative Code (TAC) Chapters 262 and 263 to implement individualized skills and socialization effective January 1, 2023.

The 2022 - 2023 General Appropriations Act (GAA), Senate Bill (S.B.) 1, 87th Legislature, Regular Session, 2021 (Article II, Health and Human Services Commission, Rider 23) authorized funding for the provision of individualized skills and socialization in the Home and Community-Based Services (HCS), Texas Home Living (TxHmL), and Deaf-Blind with Multiple Disabilities Programs. HHSC adopted rates for individualized skills and socialization based on the available appropriations, effective January 1, 2023.

The purpose of the adoption is to amend the reimbursement methodology for the HCS and TxHmL Programs to remove day habilitation and establish rate methodologies for individualized skills and socialization. The adopted amendment also clarifies the rate methodology for each HCS and TxHmL waiver service and implements some recommendations in HHSC's legislative report, *Rates: Intermediate Care Facilities and Certain Waiver Providers*, required by the 2022 - 2023 GAA, S.B. 1, 87th Legislature, Regular Session, 2021 (Article II, Health and Human Services Commission, Rider 30).

#### COMMENTS

The 21-day comment period ended July 28, 2023.

During this period, HHSC received comments regarding the proposed rule from three commenters: Providers Alliance for Community Services of Texas (PACSTX), Private Providers Association of Texas (PPAT), and Texas Council of Community Centers (Texas Council).

A summary of comments relating to §355.723 and HHSC's responses follow.

**Comment:** Multiple commenters expressed support for using a pro forma costing analysis when HHSC has insufficient cost data to establish the attendant compensation rate component. Due to current economic drivers, the commenters asked HHSC to use a pro forma costing analysis for HCS/TxHmL attendant compensation.

**Response:** The methodology for the attendant compensation rate component is outside the scope of this rule packet, as that component is established under §355.112. However, HHSC can rely on pro forma costing if it deems that available cost data is insufficient under §355.101(g); therefore no changes were made in response to these comments.

**Comment:** Multiple commenters shared concerns with modifications to subsection (f), Refinement and adjustment. The commenters said HHSC should not refine or adjust rates without consideration of the actual costs to deliver services. The commenters also said HHSC should not recategorize costs into other rate components simply because there is insufficient funding for certain components. Otherwise, the collection of data from cost reports will have no relationship to the rates and paint an inaccurate picture of the actual costs to deliver services.

**Response:** HHSC disagrees and declines to make a change in response to these comments. The amendment to §355.723(f) allows HHSC to modify and adjust modeled assumptions if new data or more accurate assumptions become available, particularly during HHSC's regular biennial fee review process. HHSC seeks to ensure that cost reports accurately reflect the provider's costs to deliver waiver services and that the rate methodology, modeled assumptions, and associated calculations accurately capture an economic and efficient provider's allowable costs. No changes were made in response to these comments.

A minor editorial change was made to §355.723(d)(3) replacing "subparagraph" with "subsection" to correctly reference subsection (c)(5)(A) of the section.

#### 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; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under Texas Human Resources Code Chapter 32.

§355.723. *Reimbursement Methodology for Home and Community-Based Services and Texas Home Living Programs.*

(a) Prospective payment rates. The Texas Health and Human Services Commission (HHSC) sets payment rates to be paid prospectively to Home and Community-based Services (HCS) and Texas Home Living (TxHmL) providers.

(b) Levels of need.

(1) Variable rates. Rates vary by level of need (LON) for the following services:

- (A) host home/companion care (HH/CC);
- (B) individualized skills and socialization;
- (C) residential support services (RSS); and
- (D) supervised living (SL).

(2) Non-variable rates. Rates do not vary by LON for the following services:

- (A) audiology;
- (B) behavioral support;
- (C) cognitive rehabilitative therapy (CRT);
- (D) community first choice personal assistance services/habilitation (CFC PAS/HAB);
- (E) community support services transportation (CSS);
- (F) dietary;
- (G) employment assistance (EA);
- (H) in-home respite;
- (I) licensed vocational nurse (LVN);
- (J) occupational therapy (OT);
- (K) out-of-home respite (OHR);
- (L) physical therapy (PT);
- (M) registered nurse (RN);
- (N) social work;
- (O) speech therapy;
- (P) supported employment (SE); and
- (Q) supported home living transportation (SHL).

(c) Recommended rates. The recommended payment rates are determined for each HCS and TxHmL service listed in subsections (b)(1) and (2) of this section by type and, for services listed in subsection (b)(1) of this section, by LON to include the following cost areas.

(1) Attendant compensation cost area. The determination of the attendant compensation cost area is calculated as specified in §355.112 of this chapter (relating to Attendant Compensation Rate Enhancement). The attendant compensation cost area includes personal attendant staffing costs (wages, benefits, modeled staffing ratios for attendant staff, direct care trainers, and job coaches).

(2) Other direct care cost area. The other direct care cost area includes other direct service staffing costs (wages and benefits for direct care and attendant supervisors). The other direct care cost area is determined by calculating a median from allowable other direct care costs for each service, weighed by units of service for the applicable service from the most recently examined HCS/TxHmL cost report adjusted for inflation from the cost reporting period to the prospective rate period as specified in §355.108 of this chapter (relating to Determination of Inflation Indices).

(A) For the following services, multiply the other direct care cost area as specified in this paragraph by 1.044:

- (i) EA;
- (ii) in-home respite;
- (iii) OHR in a camp;
- (iv) OHR in a respite facility;
- (v) OHR in a setting where HH/CC is provided;
- (vi) OHR in a setting that is not listed; and
- (vii) SE.

(B) For the following services, multiply the other direct care cost area as specified in this paragraph by 1.07:

- (i) individualized skills and socialization;
- (ii) in-home and out-of-home individualized skills and socialization;
- (iii) OHR in an individualized skills and socialization facility;
- (iv) OHR in a setting with SL or RSS is provided;
- (v) RSS; and
- (vi) SL.

(3) Administration and operations cost area. The administration and operation cost area includes:

- (A) administration and operation costs; and
- (B) professional consultation and program support costs, including:

- (i) allowable costs for required case management and service coordination activities; and
- (ii) service-specific transportation costs.

(4) Projected costs. Projected costs are determined by allowable administrative and operations costs from the most recently audited cost report adjusted for inflation from the cost reporting period to the prospective rate period as specified in §355.108 of this chapter. The steps to determine projected costs are as follows.

(A) Step 1. Determine total projected administration and operation costs and projected units of service by service type using cost reports submitted by HCS and TxHmL providers in accordance with §355.722 of this subchapter (relating to Reporting Costs by Home and Community-based Services (HCS) and Texas Home Living (TxHmL) Providers).

(B) Step 2. Determine the HH/CC coordinator component of the HH/CC rate as follows: This component is determined by summing total reported HH/CC coordinator wages and allocated payroll taxes and benefits from the most recently available audited HCS cost report, inflating those costs to the rate period, and dividing the resulting product by the total number of host home units of service reported on that cost report.

(C) Step 3. Determine total HH/CC coordinator dollars as follows. Multiply the HH/CC coordinator component of the HH/CC rate from subparagraph (B) of this paragraph by the total number of HH/CC units of service reported on the most recently available, reliable audited HCS cost report database.

(D) Step 4. Determine total projected administration and operation costs after offsetting total HH/CC coordinator dollars as follows. Subtract the total HH/CC coordinator dollars from subparagraph (C) of this paragraph from the total projected administration and operation costs from subparagraph (A) of this paragraph.

(E) Step 5. Determine projected weighted units of service for each HCS and TxHmL service type as follows.

(i) SL and RSS in HCS. Projected weighted units of service for SL and RSS equal projected SL and RSS units of service times a weight of 1.00.

(ii) Individualized skills and socialization in HCS and TxHmL. Projected weighted units of service for individualized skills and socialization equal projected individualized skills and socialization units of service times a weight of 0.25.

(iii) HH/CC in HCS. Projected weighted units of service for HH/CC equal projected HH/CC units of service times a weight of 0.50.

(iv) SHL in HCS, high medical needs support in HCS, and CSS in TxHmL. For each service, projected weighted units of service equal projected units of service times a weight of 0.30.

(v) Respite in HCS and TxHmL. Projected weighted units of service for respite equal projected respite units of service times a weight of 0.20.

(vi) SE in HCS and TxHmL. Projected weighted units of service for SE equal projected units of service times a weight of 0.25.

(vii) Behavioral support in HCS and TxHmL. Projected weighted units of service for behavioral support equal projected behavioral support units of service times a weight of 0.18.

(viii) Audiology, CRT, OT, PT, and speech therapy in HCS and TxHmL. Projected weighted units of service for audiology, CRT, OT, PT, and speech therapy equal projected audiology, CRT, OT, PT, and speech therapy units of service times a weight of 0.18.

(ix) Social work in HCS. Projected weighted units of service for social work equal projected social work units of service times a weight of 0.18.

(x) Nursing in HCS and TxHmL and high medical needs nursing in HCS. Projected weighted units of service for nursing

and high medical needs nursing equal projected nursing and high medical needs nursing units of service times a weight of 0.25.

(xi) EA in HCS and TxHmL. Projected weighted units of service for EA equal projected EA units of service times a weight of 0.25.

(xii) Dietary in HCS and TxHmL. Projected weighted units of service for dietary equal projected dietary units of service times a weight of 0.18.

(F) Step 6. Calculate the total projected weighted units of service by summing the projected weighted units of service from subparagraph (E) of this paragraph.

(G) Step 7. Calculate the percent of total administration and operation costs to be allocated to the service type by dividing the projected weighted units for the service type from subparagraph (E) of this paragraph by the total projected weighted units of service from subparagraph (F) of this paragraph.

(H) Step 8. Calculate the total administration and operation cost to be allocated to the service type by multiplying the percent of total administration and operation costs allocated to the service type from subparagraph (G) of this paragraph by the total administration and operation costs after offsetting total HH/CC coordinator dollars from subparagraph (D) of this paragraph.

(I) Step 9. Calculate the administration and operation cost component per unit of service for each HCS and TxHmL service type by dividing the total administration and operation cost to be allocated to that service type from subparagraph (H) of this paragraph by the projected units of service for that service type from subparagraph (A) of this paragraph.

(J) Step 10. The final recommended administration and operation cost area per unit of service for each HCS and TxHmL service type is calculated as follows.

(i) For the following services, multiply the administration and operation cost area from this subparagraph by 1.044:

- (I) CFC PAS/HAB;
- (II) CSS;
- (III) EA;
- (IV) in-home individualized skills and socialization;
- (V) in-home respite;
- (VI) OHR in a camp;
- (VII) OHR in a respite facility;
- (VIII) OHR in a setting where HH/CC is provided;
- (IX) OHR in a setting that is not listed;
- (X) SE; and
- (XI) SHL.

(ii) For the following services, multiply the administration and operation cost area from this subparagraph by 1.07:

- (I) individualized skills and socialization;
- (II) in-home and out-of-home individualized skills and socialization;
- (III) OHR in an individualized skills and socialization facility;



(IV) RSS; and

(V) SL.

(5) The facility cost area. The facility cost area includes the following:

(A) room and board costs, including rent, mortgage interest, depreciation expenses, property taxes, property insurance, and food costs as defined in §355.103 of this chapter (relating to Specifications for Allowable and Unallowable Costs), unless excluded if unallowable under Federal Medicaid rules; and

(B) non-room and board costs not already reimbursed through the monthly amount collected from the individual receiving services as defined in 26 TAC §565.27(a).

(6) The facility cost area is determined by calculating a median cost for each service using allowable facility costs, weighted by units of service for the applicable service from the most recently audited cost report, adjusted for inflation from the cost reporting period to the prospective rate period as specified in §355.108.

(A) For the following services, multiply the facility cost component by 1.044:

(i) HH/CC;

(ii) OHR in a camp;

(iii) OHR in a respite facility; and

(iv) OHR in a setting where HH/CC is provided.

(B) For the following services, multiply the facility cost component by 1.07:

(i) individualized skills and socialization;

(ii) in-home and out-of-home DH;

(iii) OHR in a DH or individualized skills and socialization facility;

(iv) OHR in a setting where SL or RSS are provided;

(v) RSS; and

(vi) SL.

(d) Recommended payment rates are determined for each service by the following.

(1) CFC PAS/HAB. The recommended payment rate is calculated by summing the attendant compensation cost area and the administration and operations cost area as defined in subsection (c) of this section. The recommended rate for CFC PAS/HAB does not include a cost component for other direct care staffing costs.

(2) CRT. The recommended payment rate is developed based on payment rates determined for other programs that provide similar services. If payment rates are not available from other programs that provide similar services, payment rates are determined using a pro forma analysis in accordance with §355.105(h) of this chapter (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(3) HH/CC. The recommended payment rate is determined by summing the direct care worker component, HH/CC coordinator cost area, administration and operations component, and facility cost area. The direct care worker component is calculated using the median of allowable direct care worker costs, weighted by HH/CC units of service from the most recently examined cost report database. The result is adjusted for each LON. The HH/CC coordinator cost area and administration and operations components are calculated as determined

in subsection (c) of this section. The facility cost area is calculated as determined in subsection (c) of this section but does not include room and board costs as defined in subsection (c)(5)(A) of this section. If HHSC lacks reliable cost report data, the rate is developed based on payment rates determined for other programs that provide similar services. If payment rates are not available from other programs that provide similar services, payment rates are determined using a pro forma analysis in accordance with §355.105(h) of this chapter.

(4) In-home respite. The recommended payment rate is calculated by summing the attendant compensation cost area and the administration and operations component as defined in subsection (c) of this section.

(5) Individualized skills and socialization. The recommended payment cost areas are adjusted using modeled staffing ratios to establish recommended rates for on-site and off-site rates by LON. The recommended rates are calculated by summing the attendant compensation cost area, other direct care cost area, the administration and operations component, and the facility cost component as defined in subsection (c) of this section. Transportation costs are calculated as a standalone component separate from the administration and operations component for off-site services. The enhanced staffing level one rate is equal to the LON 8 individualized skills and socialization off-site recommended rate. The enhanced staffing level two rate is modeled and assumes a one-staff-to-one-individual staffing ratio.

(6) Nursing services provided by an RN, nursing services provided by an LVN, physical therapy, occupational therapy, speech/language therapy, behavioral support services, audiology services, dietary services, EA, SE, and transition assistance services are determined based on §355.725 of this subchapter (relating to Reimbursement Methodology for Common Waiver Services in Home and Community-based Services (HCS) and Texas Home Living (TxHmL)).

(7) OHR. The recommended payment cost areas may be adjusted using modeled direct care worker hour-per-unit ratios for similar services to calculate OHR rates that vary by setting where the service is provided. The recommended payment rates are calculated by summing the attendant compensation cost area, other direct care cost area, the administration and operations component, and the facility cost component as defined in subsection (c) of this section.

(8) SHL and CSS. The recommended payment rates for SHL and CSS are calculated by summing the attendant compensation cost area and the administration and operations cost area as defined in subsection (c) of this section.

(9) SL and RSS. The recommended payment cost areas are adjusted using modeled direct care worker hour-per-unit ratios updated by actual hours reported on the most recently audited cost report to calculate variable rates by LON. The recommended rates are calculated by summing the attendant compensation cost area, other direct care cost area, and the administration and operations component as defined in subsection (c) of this section. The facility cost area is calculated as determined in subsection (c) of this section but does not include room and board costs defined in subsection (c)(5)(A) of this section.

(10) Social work. The recommended payment rate is calculated using the weighted median social worker hourly cost from the most recently audited cost report, and the administration and operations cost component as determined in subsection (c) of this section. If HHSC lacks reliable cost report data, the rate is developed based on payment rates determined for other programs that provide similar services. If payment rates are not available from other programs that provide similar services, payment rates are determined using a pro forma analysis in accordance with §355.105(h) of this chapter.

(e) Other sources of cost information. If HHSC has determined that there is not sufficient reliable cost report data from which to set reimbursements and reimbursement ceilings for waiver services, reimbursements and reimbursement ceilings will be developed by using rates for similar services from other Medicaid programs, data from surveys, cost report data from other similar programs, consultation with other service providers or professionals experienced in delivering contracted services, and similar sources. If HHSC has insufficient cost data, the recommended payment rate for each service is developed based on payment rates determined for other programs that provide similar services. If payment rates are not available from other programs that provide similar services, payment rates are determined using a pro forma analysis in accordance with §355.105(h) of this chapter.

(f) Refinement and adjustment. Refinement and adjustment of the rate components and model assumptions will be considered, as appropriate, by HHSC. All adopted rates are limited to available levels of appropriated state and federal funds as defined in §355.201 of this chapter (relating to Establishment and Adjustment of Reimbursement Rates for Medicaid).

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

Texas Health and Human Services Commission

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For further information, please call: (512) 867-7817



## SUBCHAPTER H. BASE WAGE REQUIREMENTS FOR PERSONAL ATTENDANTS

### 1 TAC §355.7051

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §355.7051, concerning Base Wage for a Personal Attendant. Section 355.7051 is adopted with changes to the proposed text as published in the July 7, 2023, issue of the *Texas Register* (48 TexReg 3598). This rule will be republished.

#### BACKGROUND AND JUSTIFICATION

The amendment implements Rider 30(a) of the 2024-25 General Appropriations Act, House Bill 1, 88th Legislature, Regular Session, 2023 (Article II, HHSC, Rider 30(a)). Rider 30(a) appropriates funds to HHSC to increase the minimum base wage paid to "personal attendants" from \$8.11 to \$10.60 per hour.

In response to Rider 30(a), HHSC must update its program requirements to require service providers to pay this updated minimum base wage. To ensure consistency and clarity, the amendment also adds additional services to the definition of "personal attendant," including assisted living and in-home respite, in the Home and Community-based Services - Adult Mental Health program. In addition, the amendment replaces day habilitation with individualized skills and socialization services.

#### COMMENTS

The 21-day comment period ended July 28, 2023.

During this period, HHSC received two comments regarding the proposed rule from three commenters. HHSC received comments from the following organizations: the Providers Alliance for Community Services of Texas (PACSTX), Private Providers Association of Texas (PPAT), and the Texas Council of Community Centers.

A summary of comments relating to §355.7051 and HHSC's responses follows:

**Comment:** Multiple commenters expressed opposition to including supervised living and residential support services to the definition of a personal attendant subject to the \$10.60 per hour base wage in §355.7051(a) because a direct care worker's pay includes room and board for live-in staff.

**Response:** HHSC agrees and revised the rule to exclude supervised living and residential support services (SL/RSS). HHSC acknowledges that reimbursement of attendants within a residential setting may combine payment for their room and board and wages; therefore, holding providers to a base wage for personal attendants would not be appropriate. HHSC assumes that attendants' reimbursement in these residential settings is equivalent to \$10.60 per hour, as supported with the intention of Rider 30(a) and adopted rate increases.

**Comment:** Multiple commenters expressed opposition to including individualized skills and socialization in the definition of personal attendant in 355.7051(a)(3)(A)(vii)(VI), (viii)(IV), and (ix)(IV) as the individualized skills and socialization services were not previously subject to the attendant base wage nor was there an appropriation for this service.

**Response:** HHSC disagrees and declines to exclude individualized skills and socialization from a personal attendant definition because attendants providing individualized skills and socialization are reimbursed based on an hourly wage. Rate actions were not proposed at this time since current reimbursement rates for the individualized skills and socialization services assume that attendants' base wages exceed \$10.60 per hour.

#### 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; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under Texas Human Resources Code Chapter 32.

§355.7051. *Base Wage for a Personal Attendant.*

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

(1) HHSC contractor--A person who has a written agreement with the Texas Health and Human Services Commission (HHSC) to provide a service to an individual in exchange for payment from HHSC.

(2) Managed care organization or MCO--Has the meaning assigned in §353.2 of this title (relating to Definitions).

(3) Personal attendant--

(A) An employee or subcontractor of an HHSC contractor, or an employee of an employer in the consumer directed services (CDS) option, who provides the following services, as described in 40 TAC §49.101 (relating to Application):

(i) services in the Community Attendant Services program;

(ii) services in the Family Care program;

(iii) services in the Primary Home Care program;

(iv) day activity and health services;

(v) residential care;

(vi) in the Community Living Assistance and Support Services Program:

(I) community first choice personal assistance services/habilitation (CFC PAS/HAB);

(II) habilitation (transportation); or

(III) in-home respite;

(vii) in the Deaf-Blind Multiple Disabilities Program:

(I) CFC PAS/HAB;

(II) residential habilitation (transportation);

(III) in-home respite;

(IV) licensed assisted living;

(V) licensed home health assisted living; or

(VI) individualized skills and socialization services;

Program:

(viii) in the Home and Community-based Services

(I) CFC PAS/HAB;

(II) supported home living (transportation);

(III) in-home respite; and

(IV) individualized skills and socialization services;

Program:

(ix) in the Texas Home Living Program:

(I) CFC PAS/HAB;

(II) community support services (transportation);

(III) in-home respite; or

(IV) individualized skills and socialization services.

(B) An employee or subcontractor of an HHSC contractor who provides the following services in the Home and Community-Based Services--Adult Mental Health program, as described in 26 TAC §307.51 (relating to Purpose and Application):

(i) assisted living services;

(ii) in-home respite; and

(iii) supported home living services.

(C) An employee or subcontractor of an HHSC contractor or an employee of an employer in the CDS option who provides:

(i) personal care services, as described in Chapter 363, Subchapter F of this title (relating to Personal Care Services); or

(ii) CFC habilitation (CFC HAB) or CFC personal assistance services (CFC PAS), as described in Chapter 354, Subchapter A, Division 27 (relating to Community First Choice).

(D) An employee or subcontractor of an HHSC contractor, or an employee of an employer in the CDS option or in the block grant option, who provides consumer managed personal attendant services as described in 26 TAC Chapter 275 (relating to Consumer Managed Personal Attendant Services (CMPAS) Program).

(E) A provider or an employee of an employer in the CDS option who provides:

(i) in the STAR+PLUS program and STAR+PLUS Home and Community-based Services (HCBS) program:

(I) assisted living;

(II) CFC PAS;

(III) CFC HAB;

(IV) day activity and health services;

(V) in-home respite care;

(VI) personal assistance services; or

(VII) protective supervision;

(ii) in the STAR Health program and Medically Dependent Children Program (MDCP):

(I) day activity and health services;

(II) CFC PAS;

(III) CFC HAB;

(IV) flexible family support;

(V) in-home respite; or

(VI) personal care services; or

(iii) in the STAR Kids program and MDCP:

(I) CFC PAS;

(II) CFC HAB;

(III) personal care services;

(IV) day activity and health services;

(V) flexible family support services; or

(VI) in-home respite.

(4) Provider--Has the meaning assigned in §353.2 of this title.

(b) An HHSC contractor, other than an HHSC contractor described in subsection (c) or (d) of this section, must pay a personal attendant a base wage of at least \$10.60 per hour.

(c) An HHSC contractor that has a contract for financial management services (FMS) must ensure that an employer in the CDS option, or designated representative, pays a personal attendant a base wage of at least \$10.60 per hour.

(d) An HHSC contractor that has a CMPAS contract must:

(1) pay a personal attendant who is an employee or subcontractor of the contractor in the traditional service option or block grant option a base wage of at least \$10.60 per hour; and

(2) ensure that an individual employer of a personal attendant under the block grant option or CDS option, or the individual's representative, pays a personal attendant a base wage of at least \$10.60 per hour.

(e) An MCO must require an MCO contractor, other than an MCO contractor described in subsection (f) of this section, to pay a personal attendant a base wage of at least \$10.60 per hour.

(f) An MCO must require that an MCO contractor that has a contract for FMS ensures that an employer in the CDS option or designated representative pays a personal attendant a base wage of at least \$10.60 per hour.

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

Texas Health and Human Services Commission

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For further information, please call: (512) 867-7817



## SUBCHAPTER J. PURCHASED HEALTH SERVICES

### DIVISION 4. MEDICAID HOSPITAL SERVICES

#### 1 TAC §355.8052

The Texas Health and Human Services Commission (HHSC) adopts amendments to §355.8052, concerning Inpatient Hospital Reimbursement. The amendment is adopted without changes to the proposed text as published in the July 7, 2023, issue of the *Texas Register* (48 TexReg 3601). The rule will not be republished.

#### BACKGROUND AND JUSTIFICATION

This amendment complies with the 2024-2025 General Appropriations Act, House Bill (H.B.) 1, 88th Legislature, Regular Session, 2023 (Article II, Health and Human Services Commission, Rider 8 and Rider 16). HHSC is required by H.B. 1, to the extent allowed by law, to increase Medicaid inpatient rural hospital labor and delivery rates. Additionally, the rural hospital definition is modified to reflect the population updates in the 2020 U.S. Census. In compliance with Senate Bill 170 (S.B. 170), 86th Legislature, Regular Session 2019, to the extent allowed by law, HHSC will calculate Medicaid rural hospital inpatient rates using a cost-based prospective reimbursement methodology. HHSC must calculate rates for rural hospitals once every two years using the most recent cost information available. HHSC previously published proposed rates to be effective September 1, 2023, and, with this legislative direction, will account for the updates in this rule and republish rates.

#### COMMENTS

The 21-day comment period ended July 28, 2023.

During this period, HHSC received comments regarding the proposed rule from one commenter.

A summary of comments relating to §355.8052 and HHSC's responses follow:

Comment: The Texas Hospital Association (THA) was strongly in support of the rule as proposed.

Response: HHSC appreciates the support for the proposed amendment.

#### STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32; and Texas Government Code §531.02194, which requires adoption of a prospective reimbursement methodology for the payment of rural hospitals.

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

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## TITLE 13. CULTURAL RESOURCES

### PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

#### CHAPTER 3. STATE PUBLICATIONS DEPOSITORY PROGRAM

##### 13 TAC §3.5, §3.6

The Texas State Library and Archives Commission (commission) adopts amendments to §3.5, Standard Exemptions for State Publications in All Formats, and §3.6, Special Exemptions. The commission adopts the amendments without changes to the proposed text as published in the June 16, 2023, issue of the *Texas Register* (48 TexReg 3017). The rules will not be republished.

The adopted amendments are necessary to exempt additional types of publications not appropriate for retention in the State Publications Depository Program (program). Exempting these types of publications will ensure the program includes the types of publications that document the operations of state agencies

while easing state agencies' duties by reducing the number of publications they are required to submit to the program. In addition, exempting items that are not appropriate for inclusion in the program will allow the commission to maximize its use of record storage space.

The amendment to §3.5(11) adds course materials to the existing exemption for course schedules. This exemption covers university course schedules and courses offered by state agencies.

The amendment to §3.5(26) adds non-fiction university press publications not aligned with the commission's collection development policy to the list of exempted publications. One of the primary goals of the program is to capture all publications documenting the operation of a state agency. Non-fiction university press publications take up a considerable amount of space. If the commission were to accept all non-fiction publications, additional offsite storage would likely be necessary. Further, these titles are typically widely available at other libraries, particularly at the universities whose presses produce them. Exempting non-fiction university press publications that are not aligned with the commission's collection development priorities will ensure consistent application of the policy and that the program documents the university press function focusing on publications relating to Texas-related history and government.

The amendment to §3.5(37) adds a clarifying date to the exemption for rules and regulations. The new exemption will read "rules and regulations after 1976 (as compendia)." The State Law Library holds the complete collection of historic Texas Administrative Code (TAC) publications. The TAC from 1999 to present is available on the Secretary of State's website. Researching rules and regulations prior to 1976 can be more challenging as centralized resources such as the *Texas Register* and the TAC do not exist. Locating rules prior to 1976 may require archival research in the minutes or other records of a particular agency if published compendia are not available. If an agency did not include rule language in minutes or did not maintain or transfer records containing the text of adopted rules, there may be no other way to locate this information. For this reason, published collections of rules predating 1976 are important to the program to provide greater access to this information. However, rules and regulations after 1976 are not appropriate for the program.

The amendment to §3.5(42) adds training materials to the list of exempted publications. As with course materials, training materials that are distributed publicly do not typically document the operation of a state agency. For example, the State Bar of Texas produces course materials as part of their Continuing Legal Education programming. While these publications have historically been provided to the commission under the program, less than 1% of these publications have been requested since at least the year 2000. According to the commission's research, several other libraries maintain these materials, including the State Law Library, Legislative Reference Library, and at least five Texas law school libraries. Because these types of materials are readily available from multiple other sources and are not necessary for the program, the commission proposes to add "training materials" to the list of exempted items as §3.5(42).

Finally, amendments to §3.5 renumber the paragraphs to maintain the list in alphabetical order.

The amendments to §3.6 clarify that special exemptions are for types of publications not listed in §3.5.

The commission did not receive any comments on the proposed amendments.

**STATUTORY AUTHORITY.** The amendments are adopted under Government Code, §441.102, which requires the commission by rule to establish procedures for the distribution of state publications to depository libraries and for the retention of those publications; Government Code, §441.103, which requires a state agency to furnish copies of its state publications that exist in a physical format to the Texas State Library in the number specified by commission rules; Government Code, §441.104, which directs the commission to establish a program for the preservation and management of state publications; and Government Code, §441.105, which authorizes the commission to specifically exempt a publication or a distribution format from this subchapter.

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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Sarah Swanson

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Texas State Library and Archives Commission

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For further information, please call: (512) 463-5460



## CHAPTER 9. TALKING BOOK PROGRAM

### 13 TAC §9.1

The Texas State Library and Archives Commission (commission) adopts the repeal of 13 TAC §9.1, Definitions. The repeal is adopted without changes to the proposed text as published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2308). The rule will not be republished.

The repeal is necessary because the commission identified several needed amendments to update and clarify the definitions. The commission is adopting new §9.1 to reflect these amendments in a separate notice also in this issue of the *Texas Register*.

No comments were received regarding the proposed repeal.

**STATUTORY AUTHORITY.** The repeal is adopted under §441.006, which directs the commission to govern the state library; and Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

**CROSS REFERENCE TO STATUTE.** Government Code, Chapter 441.

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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Sarah Swanson  
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### 13 TAC §§9.1 - 9.9, 9.11 - 9.18

The Texas State Library and Archives Commission (commission) adopts new §9.1, Definitions and amendments to §9.2, Administration; §9.3, Eligibility; §9.4, Application for Service; §9.5, Priority Service to Veterans; §9.6, Status of Users; §9.7, Playback Equipment; §9.8, Books and Magazines; §9.9, Availability of Materials; §9.11, Misuse of Service; §9.12, Notification of Potential Suspension; §9.13, Correction of Problem; §9.14, Suspension of Service; §9.15, Reinstatement of Service; §9.16, Termination of Service; §9.17, Transfer of Service; and §9.18, Reactivation of Accounts. The new section and amendments are adopted without changes to the proposed text as published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2309). The rules will not be republished.

The new section and amendments are necessary to update, modernize, and clarify the rules, improve grammar and readability, and align the rules with best practices.

New §9.1 updates the overall structure of the rule and makes non-substantive grammar edits throughout. Several definitions in the new rule are essentially the same as previously defined, with the only changes being minor and non-substantive. Other changes simplify and clarify the rule language, consolidating terms when appropriate, and eliminating defined terms that are not used. Finally, some of the changes reflect language updates, including updating the name of the National Library Service for the Blind and Print Disabled.

Amendments to §9.2 update and improve the language and a citation to the United States Code provision regarding mailing free matter for blind and other handicapped persons. Amendments to §9.3 update language based on the updated definitions, delete text that is no longer necessary, and explain how an account may be maintained in good standing. Amendments to §9.4 make general language and readability improvements, update language based on the updated definitions, and delete text that is no longer necessary. Amendments to §9.5 update the section title to "Priority for Veterans" and delete language that is no longer necessary. Amendments to §9.6 update the section title to "Status of Borrowers" and delete unnecessary language. Amendments to §9.7 update language based on the updated definitions and clarify what constitutes misuse of equipment in subparagraph (a)(10). Amendments to §9.8 update language based on the updated definitions and delete duplicative language found in other sections within the chapter. Amendments to §9.9 update language based on the updated definitions. Amendments to §9.11 update language based on the updated definitions. Amendments to §9.12 update language based on the updated definitions, improve readability, and add a citation to another section within the chapter. Amendments to §9.13 make minor wording changes and update language based on the updated definitions. Amendments to §9.14 update language based on the updated definitions and improve grammar and readability. Amendments to §9.15 update language based on the updated definitions and improve readability. Amendments to §9.16 up-

date and clarify language and clarify that a borrower who wishes to reinstate service after five years must file a new application. Amendments to §9.17 update language based on the updated definitions. Amendments to §9.18 update language based on the updated definitions and improve readability.

**SUMMARY OF COMMENTS.** The commission did not receive any comments on the proposed new section or proposed amendments.

**STATUTORY AUTHORITY.** The amendments and new rule are adopted under Government Code, §441.006, which directs the commission to govern the state library; and Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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Sarah Swanson  
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For further information, please call: (512) 463-5460



## CHAPTER 10. ARCHIVES AND HISTORICAL RESOURCES

### 13 TAC §10.1, §10.5

The Texas State Library and Archives Commission (commission) adopts an amendment to §10.1, Definitions, and new §10.5, Transfer of State Agency Records to the State Archives. The commission adopts §10.1 with one correction to update the reference from subchapter to chapter. These rules will be republished. The commission adopts new rule §10.5 without changes to the proposed text as published in the June 16, 2023, issue of the *Texas Register* (48 TexReg 3019). These rules will not be republished.

The adopted amendment and new rule are necessary to facilitate and streamline state agency transfers of archival state records to the commission and ensure the state archivist has the information necessary to properly identify, arrange, describe, catalog, preserve, and provide access to the archival state records in accordance with state statutes. The new rule will benefit state agencies by establishing a systemic approach with key requirements clearly specified to improve state agencies' ability to verify they are transferring only those records that should be transferred to the state archives. The new rule will also ensure more efficient use of the commission's resources needed for managing the appraisal, accession, processing, and cataloging of incoming state agency records.

The amendment to §10.1 adds a definition for "state archives" to ensure clarity in new §10.5.

New §10.5 (a) restates the purpose of the new rule as authorized by statute. New §10.5(b) and (c) provide that a state agency must use the forms and procedures available on the commis-

sion's website or on request to initiate a transfer of archival state records. Subsection (b) applies to archival state records in the physical possession of the agency and subsection (c) applies to archival state records stored in the State Records Center. Both subsections clarify that submission of the forms constitutes a formal request to transfer archival state records to the state archives. New §10.5(d) requires that archival state records be appropriately identified, packaged, and transferred according to the procedures available on the commission's website. New §10.5(e) requires that all transfers be accompanied by an inventory. New §10.5(f) provides that records storage equipment received with transfers of records will be retained or disposed of at the discretion of the State Archives unless the transferring agency requests the equipment's return.

The commission did not receive any comments on the proposed amendment or new rule.

**STATUTORY AUTHORITY.** The amendment and new rule are adopted under Government Code, §441.190, which authorizes the commission to adopt rules establishing standards and procedures for the protection, maintenance, and storage of state records. The statute further directs the commission to pay particular attention to the maintenance and storage of archival and vital state records and authorizes the commission to adopt rules as it considers necessary to protect those records. In addition, the amendment and new rule are adopted under Government Code, §441.199, which authorizes the commission to adopt rules it determines necessary for cost reduction and efficiency of record-keeping by state agencies and for the state's management and preservation of records.

#### *§10.1. Definitions.*

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

- (1) Accession--means the formal acceptance of an item or collection into the holdings of the State Archives and generally includes a transfer of title.
- (2) Agency--means the Texas State Library and Archives Commission as an agency of the state of Texas, including the staff, collections, archives, operations, programs, and property of the Texas State Library and Archives Commission.
- (3) Commission--means the seven-member governing body of the Texas State Library and Archives Commission.
- (4) Deaccession--means the permanent removal of an item or collection of items from the holdings of the State Archives.
- (5) Disposal--means the final disposition of an item or collection of items from the State Archives which may include transfer to another repository, sale, or destruction of the item or collection.
- (6) Item--means archival material, historical item, artifact, or museum piece in the custody of the State Archives, including the Sam Houston Regional Library and Research Center.
- (7) Reappraisal--means the review of items that have been previously appraised, which may result in the identification of materials that no longer merit permanent preservation and that are candidates for deaccessioning.
- (8) State archives--means the program of the Archives and Information Services Division of the Texas State Library and Archives Commission for the continued preservation of archival state records and historical resources.

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

Filed with the Office of the Secretary of State on August 9, 2023.

TRD-202302913

Sarah Swanson

General Counsel

Texas State Library and Archives Commission

Effective date: August 29, 2023

Proposal publication date: June 16, 2023

For further information, please call: (512) 463-5460

## **TITLE 16. ECONOMIC REGULATION**

### **PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION**

#### **CHAPTER 59. CONTINUING EDUCATION REQUIREMENTS**

##### **16 TAC §59.3**

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 59, §59.3, regarding the Continuing Education Requirements, without changes to the proposed text as published in the April 7, 2023, issue of the *Texas Register* (48 TexReg 1795). These rules will not be republished.

##### **EXPLANATION OF AND JUSTIFICATION FOR THE RULES**

The rules under 16 TAC, Chapter 59, implement Texas Occupations Code, Chapter 51, Texas Department of Licensing and Regulation.

The adopted rule is necessary to implement rules being concurrently adopted which removed the requirement for registered accessibility specialists to meet continuing education requirements with an approved course provider. The adopted rules modify the list of occupations which are subject to the continuing education requirements of 16 TAC, Chapter 59, by removing registered accessibility specialists.

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

The adopted rule amends §59.3, to remove registered accessibility specialists from the list of licensees that must comply with continuing education provider requirements.

##### **PUBLIC COMMENTS**

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the April 7, 2023, issue of the *Texas Register* (48 TexReg 1795). The public comment period closed on May 8, 2023. The Department did not receive any comments from interested parties on the proposed rules.

##### **COMMISSION ACTION**

At its meeting on August 1, 2023, the Commission adopted the proposed rules as published in the *Texas Register*.

##### **STATUTORY AUTHORITY**

The adopted rule is adopted under Texas Occupations Code, Chapter 51, and Texas Government Code, Chapter 469, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rule are those set forth in Texas Occupations Code, Chapter 51, and Texas Government Code, Chapter 469. No other statutes, articles, or codes are affected by the adopted rule.

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

Filed with the Office of the Secretary of State on August 11, 2023.

TRD-202302944

Doug Jennings

General Counsel

Texas Department of Licensing and Regulation

Effective date: August 31, 2023

Proposal publication date: April 7, 2023

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



## CHAPTER 68. ELIMINATION OF ARCHITECTURAL BARRIERS

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 68, Subchapter H, §68.90; adopts new rules at Subchapter A, §68.11 and §68.12; Subchapter B, §68.22 and §68.31; and Subchapter C, §68.40; and adopts the repeal of existing rules at §§68.31, 68.51 - 68.54, 68.73, 68.74, 68.79, 68.100, and 68.101, regarding the Elimination of Architectural Barriers program; and the addition of subchapter titles to the existing chapter, without changes to the proposed text as published in the April 7, 2023, issue of the *Texas Register* (48 TexReg 1797). These rules will not be republished.

The Commission also adopts amendments to existing rules at 16 TAC Chapter 68, Subchapter A, §68.10; Subchapter B, §68.20 and §60.30; Subchapter D, §68.50; and Subchapter F, §§68.70, 68.75 and 68.76; and Subchapter H, §68.93; and adopts new rules at Subchapter B, §68.21; Subchapter C, §68.41 and §68.42; Subchapter D, §§68.51 - 68.53; and Subchapter F, §§68.73, 68.74 and 68.77, regarding the Elimination of Architectural Barriers program, with changes to the proposed text as published in the April 7, 2023, issue of the *Texas Register* (48 TexReg 1797). These rules will be republished.

### EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 68, implement Texas Government Code, Chapter 469.

The adopted rules implement changes suggested during the internal four-year rule review, incorporate department procedures for registered accessibility specialists, amend outdated rule language, and restructure the existing rules for better organization for the reader. The adopted rules also update the topics required and allowed for continuing education hours to provide additional options for licensees.

The adopted rules are necessary to establish requirements regarding accessibility to the public, registered accessibility specialists, building and facility owners, and design professionals.

### SECTION-BY-SECTION SUMMARY

The adopted rules create new Subchapter A, General Provisions, which includes §68.1 and §§68.10 - 68.12.

The adopted rules amend §68.10, Definitions. The adopted rules add the definitions "day," "Department," "person," "project file," and "Texas Architectural Barriers Online System (TABS);" and amend the definitions of "owner" and "public entity" for clarity. The adopted rules also remove definitions that are not used in the chapter or otherwise have common meanings, including "commerce," "contract provider," "registered building or facility," "rules," "state agency," and "variance application." The adopted rules include Advisory Committee recommended changes to the published rule text at paragraph (5); the Committee recommended that the proposed changes to the term "completion of construction" not be adopted. The adopted rules also include Advisory Committee recommended changes to the published rule text at paragraphs (28) and (29) to correct numbering.

The adopted rules add new §68.11, Technical Standards and Technical Memoranda. The adopted rules adopt by reference the 2012 Edition of the Texas Accessibility Standards and authorize the department to publish memoranda for clarification of technical matters. The adopted rule was previously in §68.100, "Technical Standards and Technical Memoranda," which is adopted for repeal.

The adopted rules add new §68.12, Forms. The adopted rules provide that only forms issued by the department and submitted as prescribed will be accepted. The adopted rules also provide the limitations and penalties for use of non-authorized forms submitted to the department.

The adopted rules create new Subchapter B, Registration Requirements; Exemptions, which includes §§68.20 - 68.22, 68.30 and 68.31.

The adopted rules amend §68.20, Buildings and Facilities Subject to Compliance with the Texas Accessibility Standards (TAS). The adopted rules retitle the section to "Buildings and Facilities Subject to Compliance," update the language to reflect current terminology and also adds (c)(13) related to residential amenity spaces open to the public and (c)(14) related to temporary and emergency construction. The adopted rules add subsection (a) to clarify that all buildings or facilities listed in §68.20 are subject to compliance; move the exemption for establishments occupied as a related to primary residences to §68.30, Exemptions; and move the option to registration and review of projects with an estimated cost of less than \$50,000 to adopted new §68.21, Registration of Project or Lease Required. The adopted rules include Advisory Committee recommended changes to the published rule text at former proposed subsection (c)(14) to remove provisions related to pedestrian elements.

The adopted rules add new §68.21, Registration of Project or Lease Required. The adopted rules centralize the registration requirements for all projects and state leases subject to the Act. As discussed above, the adopted rules provide the option to register projects with an estimated construction cost of less than \$50,000.

The adopted rules add new §68.22, State Leases. The adopted rules relocate the requirements from §68.101, which is adopted for repeal. The adopted rules include subsection (a) to pro-



vide that state leased buildings or facilities with annual lease expenses of \$12,000 or more must be registered with the Department; subsection (b) to indicate the requirements that a leased building must comply with; and subsection (c) to prohibit a registered accessibility specialist from performing inspection services on a building subject to a state lease.

The adopted rules amend §68.30, Exemptions. The adopted rules add paragraph (5) to create an exemption for establishments that serve as the primary residence of the proprietor.

The adopted rules repeal current §68.31, Variance Procedures, and add new §68.31, with the same section title. The adopted rules clarify the process an owner or owner's designated must follow to apply for a variance or appeal the denial of a variance request.

The adopted rules create new Subchapter C, Owner Responsibilities, which include §§68.40 - 68.42.

The adopted rules add new §68.40, Owner Responsibilities. The adopted rules include section (a) which requires an owner to comply with the Act, TAS, and the chapter, if the owner has a construction project with an estimated construction cost of \$50,000 or more; (b) centralize the responsibilities of an owner in subsection to notify the department of changes; (c) report a change in the estimated date of completion; (d) submit a response to an inspection report when corrective modifications are required and complete them in a prescribed time; and (e) submit construction documents, if applicable.

The adopted rules add new §68.41, Inspection Required. The adopted rules require an owner to (a) have a project inspected by a registered accessibility specialist no later than a year from completion of construction; (b) request an inspection in writing; and (c) be present or have an agent or representative onsite during the inspection.

The adopted rules add new §68.42, Designated Agent. The adopted rules (a) specify the process an owner must follow to designate an agent and (b) clarify the role of a designated agent who is authorized to act on behalf of the owner. The adopted rules include Advisory Committee recommended changes to the published rule text at subsections (a) and (b) to combine the subsections; the remaining subsections have been re-lettered.

The adopted rules create new Subchapter D, Construction Documents; Inspections; and Compliance, which includes §§68.50 - 68.53.

The adopted rules amend §68.50, Submission of Construction Documents. The adopted rules amend the rules for clarity; eliminate requirements which are now unnecessary due to the online registration system; and add subsection (d) to provide notice that construction documents submitted to the department are department property. The adopted rules also include Advisory Committee recommended changes to the published rule text at subsection (b) to clarify that an owner must submit construction documents to a registered accessibility specialist prior to commencement of construction in unincorporated areas (extraterritorial jurisdictions) that don't issue building permits.

The adopted rules repeal §68.51, Review of Construction Documents, and add new §68.51, Plan Review Requirements. The new adopted rules (a) establish the requirements for a registered accessibility specialist to perform a review; (b) specify the process for review of revised or supplemental documents submitted by an owner; (c) set the timeline for providing plan review findings; and (d) outline the items that must be in a plan review or

plan revision review report. The adopted rules include Advisory Committee recommended changes to the published rule text at subsections (a), (b), and (d), to correct the term "plan revision review." The adopted rules also include Advisory Committee recommended changes to the published rule text at subsection (b) to require an owner to verify the date of construction completion in writing at the time of submission of revised or supplemental documents.

The adopted rules repeal §68.52, Inspections, and add new §68.52, Inspections and Corrective Modifications. The adopted rules (a) set requirements a registered accessibility specialist must comply with prior to an inspection, (b) specify requirements for an inspection to be valid, (c) set the items that must be included in an inspection report, (d) outline steps an owner must take if corrective modifications are required, and (e) set the time a response must be submitted in TABS. The adopted rules include Department recommended changes to published rule text at subsection (d) to clarify that the owner must submit the response to the inspection report directly to the registered accessibility specialist.

The adopted rules repeal §68.53, Corrective Modifications Following Inspection, and add new §68.53, Transmittal Letters. The adopted rules (a) set the timeline for providing a transmittal letter to an owner and (b) specify the items that must be included in a transmittal letter.

The adopted rules repeal §68.54, as the text is duplicative to provisions in adopted new §68.52, Inspections and Corrective Modifications.

The adopted rules create new Subchapter E, Advisory Committee, which includes §68.65.

The adopted rules create new Subchapter F, Registered Accessibility Specialists, which includes §68.70 and §§68.73 - 68.77. The adopted rules include Advisory Committee recommended changes to the published rule text to make a clerical correction to the title of the new Subchapter F.

The adopted rules amend §68.70, Registered Accessibility Specialists--Qualifications for Certification, with a change to the title of the section to Registered Accessibility Specialist Certification--Eligibility Qualifications, and Application Requirements. The adopted rules standardize the language and form for certification with other department rules.

The adopted rules repeal §68.73, Registration Requirements--Renewal, and replace it with new §68.73, Registered Accessibility Specialist Certification--Renewal Requirements. The adopted rules prescribe the process for renewal of a certification and standardize language and form for renewals with other department rules. The adopted rules include Advisory Committee recommended changes to the published rule text at subsection (a)(3) to correct a clerical error.

The adopted rules repeal §68.74, Continuing Education, and add new §68.74, with the same section title. The adopted rules provide (a) that a registered accessibility specialist must complete four hours of continuing education prior to license renewal, (b) the list of topics that meet eligibility requirements for continuing education, (c) that a registered accessibility specialist must certify completion of hours at the time of renewal, and (d) the timeline for completion of continuing education hours prior. The adopted rules also (e) limit credit for continuing education to completion of a course once per one-year period, (f) require a registered accessibility specialist to maintain a copy of their

records of completion, and (g) set an effective date for application of the rule. The adopted rules also include Department recommended changes to the published text at subsections (c)-(g) to correct numbering.

The adopted rules amend §68.75, Responsibilities of the Registered Accessibility Specialist. The adopted rules (a) set the deadline for a registered accessibility specialist to submit received fees to the department, (b) require a registered accessibility specialist to secure written authorization prior to performing services, (c) set records retention timelines, and (d) prescribe timelines for uploading a change to the estimated date of completion of construction. The adopted rules include Department recommended changes to the published rule text at subsection (e) to clarify the registered accessibility specialist's duty.

The adopted rules amend §68.76, Standards of Conduct. The adopted rules update language throughout the section, and clarify the requirements in subsections (b) and (c). The adopted rules also include Advisory Committee recommended changes to the published rule text at subsection (c)(3) which provide that non-design related review services are not consulting or professional services.

The adopted rules add new §68.77, Shared Services. The adopted rules (a) authorize a registered accessibility specialist to engage another registered accessibility specialist to assist in providing services to an owner and (b) outline the requirements each must comply with under the section.

The adopted rules repeal §68.79, Contract Providers, as this license type is not issued by the department.

The adopted rules create new Subchapter G, Fees, which includes §68.80.

The adopted rules create new Subchapter H, Enforcement, which includes §68.90 and §68.93.

The adopted rules amend §68.90, Administrative Sanctions or Penalties. The adopted rules remove the term "procedures" from subsection (a); and remove the terms "contract provider" and "department employee" in subsection (b).

The adopted rules amend §68.93, Complaints, Investigations, and Audits. The adopted rules amend subsection (b) by removing the term "contract providers," and adding that owners are also subject to the Act and chapter 68. The adopted rules update subsection (c) to reflect technological changes related to TABS and provide that records may be submitted in a time prescribed by the department.

The adopted rules repeal §68.100, Technical Standards and Technical Memoranda, which has been repropoed and renumbered as discussed above.

The adopted rules create new Subchapter I, General Technical Requirements, which includes §§68.102-68.104.

## PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the April 7, 2023, issue of the *Texas Register* (48 TexReg 1797). The public comment period closed on May 8, 2023. The Department received comments from eight interested parties on the proposed rules. The public comments are summarized below.

Comment: The Department received a comment submitted by an individual opposed to §68.52 but was otherwise in support of

the proposed rules. The individual submitted a question regarding a definition in §68.52(b) regarding the presence of a representative of an owner. Specifically, the individual opposed the requirement in §68.52(d) for the owner to submit a response to the inspection report to the registered accessibility specialist as it may cause issues with monitoring if an owner fails to comply.

*Department Response:* The Department thanks the individual for their support and comments. The Department will not respond to the question presented by the individual regarding §68.52(b) but is available to provide technical assistance. The Department has updated the language in §68.52(d) to reflect that the responsibility of submitting the form is on the owner. The Department will continue to maintain discussions with the industry and owners to ensure that the intent of the rule is met.

Comment: The Department received a comment submitted by an individual regarding §68.76(c), conflict of interest provisions. The individual expressed concerns about the fact that a registered accessibility specialist is often engaged by multiple parties at different stages of a project and subsection (2) would require disclosure to each party. Additionally, the individual proposed that subsection (3) should be clarified or removed from the proposed changes due to the potential limitations it may place on a registered accessibility specialist who reviews reports for a project.

*Department Response:* The Department appreciates the individual's concerns and suggestions. Subsection 68.76(c)(3) has been changed to clarify that non-design related review services are not consulting or professional services for purposes of this section.

Comment: The Department received a submission an individual that was non-responsive to the substance of the proposal.

*Department Response:* The Department notes that the individual's comment is unrelated to the proposal and will not be addressed in this preamble. The Department did not make any changes to the proposed rules in response to this submission.

Comment: The Department received three comments from an individual regarding §§68.20, 68.73, and 68.76.

The individual submitted comments regarding §68.20(c)(14), pedestrian elements. The individual suggested requiring compliance with TAS for all rights of ways and easements for public use, regardless of when they become public property, which can be unclear.

The individual submitted comments regarding the number of hours required for continuing education in §68.73(a)(3).

The individual submitted comments regarding §68.76(c)(3) related to the prohibition on independent third-party consulting. The individual suggested that consulting enhances public safety and should not be prohibited.

*Department Response:* The Department thanks the individual for their comments. The Department will address each comment in order, separately.

The Department appreciates the industry insight on the application of the addition of pedestrian elements of the proposed rules. The Department has withdrawn former proposed §68.20(c)(14), related to pedestrian elements, from the proposed rules to allow further discussion with industry stakeholders and the Advisory Committee.

The Department appreciates the comment regarding the hours required for continuing education and has made an administrative correction to the proposed rules to change the number of hours required from eight to four to ensure consistency with new proposed §68.74.

The Department appreciates the insight on the application of §68.76(c)(3) and the use of third-party consultants as they apply to the proposed rules. As noted above, §68.76(c)(3) has been changed to clarify that non-design related review services are not consulting or professional services for purposes of this section.

Comment: The Department received five comments from an individual regarding §§68.10, 68.42, 68.50, 68.51, and 68.76. The individual also commented regarding the misspelling of the title of "Subchapter F. Registered Accessibility Specialists."

The individual submitted a comment regarding the term of "completion of construction" as defined in §68.10(5). Specifically, the individual notes that the proposed language will limit options and recourse in the event violations are discovered after a contractor has been paid.

The individual submitted non-substantive formatting suggestions regarding §68.42.

The individual submitted comments regarding §68.50(b), Submission of Construction Documents. The individual notes that clarification is needed in the event there is not a design professional and there is no authority with jurisdiction that issues building permits.

The individual submitted comments regarding §68.51, Plan Review Requirements, related to the use of the term "review" in conjunction with "plan revision."

The individual noted that the title of Subchapter F is misspelled.

*Department Response:* The Department thanks the individual for their comments. The Department will address each comment in order, separately.

The Department appreciates insight on the application of the proposed change to the definition of "completion of construction." The Department has withdrawn proposed changes to §68.10(5) to allow further discussion with industry stakeholders and the Advisory Committee.

The Department appreciates the comments regarding §68.42 and has changed the proposed rule to reflect the formatting suggestions and renumbered the rule accordingly.

The Department appreciates insight on the application of the proposed rule text at §68.50(b) and has made changes to address situations when there is an unincorporated portion of a county that does not issue building permits.

The Department appreciates the suggestion regarding the use of the term "plan revision review" and has made non-substantive changes throughout §68.51 to correct references to the proposed term "plan revision."

The Department thanks the commenter for their observation and has made the correction to the title of Subchapter F.

Comment: The Department received a comment from the Accessibility Professionals Association (APA). The APA's comment included multiple subparts regarding §§68.10, 68.11, 68.20, 68.40, 68.52, 68.73, 68.74, and 68.76. Additionally, the APA commented regarding the Department's local employment

impact statement; public benefit statement; and fiscal impact on small businesses, micro-businesses, and rural communities, all of which are contained in the preamble of the proposed rules.

The APA states that reducing continuing education units (CEUs) will have a financial impact on companies providing continuing education.

The APA states that reducing the number of hours will result in persons who perform at a lower quality and removing the requirement for approval of CEUs will open the door to fraud and eliminate quality control.

The APA states that reducing CEUs will impact the economy of continuing education providers.

The APA submitted comments regarding the term of "completion of construction" in §68.10(5), noting that the time of final payment may be hard to track and is not publicly available to all parties.

The APA submitted comments regarding §68.11, recommending that all technical memorandums be reviewed by the Advisory Committee prior to issuance.

The APA submitted comments regarding §68.20(14) related to pedestrian elements. Specifically, the APA points out that it is difficult to ascertain future ownership at the time of registration making compliance problematic.

The APA submitted questions seeking clarification regarding §68.40, related to an owner's responsibilities.

The APA submitted a comment regarding §68.52, Inspections and Corrective Modifications, specifically recommending that a contractor, tenant, or other individual who may not represent the owner but is onsite be authorized to sign as a witness during an inspection.

The APA submitted comments regarding the number of hours required for continuing education in §68.73(a)(3).

The APA submitted a comment on §68.74 recommended that the number of required continuing education hours in the proposed rule text be increased to eight hours.

The APA submitted a comment regarding §68.76(c)(2). The APA expressed concerns about the fact that a registered accessibility specialist is often engaged by multiple parties at different stages of a project and subsection (2) would require disclosure to each party.

The APA submitted multiple observations and questions regarding §68.76(c)(3) relating to conflict of interest.

*Department Response:* The Department thanks APA for its extensive review and comments. The Department will address each comment in order, separately.

The Department appreciates industry input and understands that companies may be impacted but disagrees with this comment; however, this number cannot be quantified and registered accessibility specialists will still be required to obtain four hours of continuing education credits. The Department did not make any changes to the proposed rules in response to this submission.

The Department appreciates industry input but disagrees with this comment. Registered accessibility specialists will have the opportunity to seek training from a broader number of providers based on the selected topics listed in §68.74. The Department did not make any changes to the proposed rules in response to this submission.

The Department appreciates the contribution that continuing education providers have on the EAB community, however it disagrees with the comment based on its analysis. The Department did not make any changes to the proposed rules in response to this submission.

The Department appreciates insight on the application of the proposed change to the definition of "completion of construction." As noted above, the Department has withdrawn proposed changes to §68.10(5) to allow further discussion with industry stakeholders and the Advisory Committee.

The Department recognizes the need for industry input when drafting guidance, rules, and other technical documents. The Department works closely with workgroups and consults with its Advisory Committee members, as needed. The Department did not make any changes to the proposed rules in response to this submission.

The Department appreciates the industry insight on the application of the addition of pedestrian elements of the proposed rules. As stated above, Department has withdrawn former proposed §68.20(c)(14), related to pedestrian elements, to allow further discussion with industry stakeholders and the Advisory Committee.

The Department notes that the APA's submission regarding §68.40 is not a comment on the proposal but a request for clarification. Technical guidance will be provided by program staff. The Department did not make any changes to the proposed rules in response to this submission.

The Department appreciates the comment regarding §68.52 related to persons authorized to sign a Proof of Inspection Form but disagrees with the suggested change. The Department did not make any changes to the proposed rules in response to this submission.

The Department appreciates the comment regarding the hours required for continuing education and as noted above, has made an administrative correction to the proposed rules to change the number of hours required from eight to four to ensure consistency with new proposed §68.74.

The Department appreciates the recommendation submitted by the APA regarding the number of continuing education hours in §68.74, however it disagrees with this change. The technical workgroup and Advisory Committee discussed and approved of the recommendation to reduce the required CEU hours. The Department did not make any changes to the proposed rules in response to this submission.

The Department appreciates the APA's concerns regarding §68.76(c)(2). The Advisory Board's recommended changes to proposed text at §68.76(c)(3) to clarify that non-design related review services are not consulting or professional services for purposes of this section incorporate the concerns of the APA.

The Department appreciates the analysis and review of the APA regarding §68.76. As noted above §68.76(c)(3) has been changed to clarify that non-design related review services are not consulting or professional services for purposes of this section.

Comment: The Department received a comment an individual which included multiple subparts regarding §§68.10, 68.52, 68.73, 68.75, and 68.76.

The individual submitted comments regarding the term of "completion of construction" in §68.10(5). The individual rec-

ommended the use of the definition of "substantial completion" used by the AIA when defining completion of construction.

The individual submitted a question regarding application of §68.52(d).

The individual submitted comments regarding the number of hours required for continuing education in §68.73(a)(3).

The individual submitted a question regarding §68.75(c).

The individual submitted a question regarding §68.75(e).

The individual submitted a comment regarding §68.76(c)(2). The individual expressed concerns that a registered accessibility specialist is often engaged by multiple parties at different stages of a project and subsection (2) would require disclosure to each party.

The individual submitted comments regarding §68.76(c)(3) related to the prohibition on independent third-party consulting.

*Department response:* The Department thanks the individual for their review and comments. The Department will address each comment in order, separately.

The Department appreciates the individual's suggestion regarding the definition of "completion of construction." As noted above, the Department has withdrawn proposed changes to §68.10(5) to allow further discussion with industry stakeholders and the Advisory Committee.

The Department notes that the individual's submission is not a comment on the proposal but a request for clarification regarding §68.52. Technical guidance will be provided by program staff. The Department did not make any changes to the proposed rules in response to this submission.

The Department appreciates the comment regarding the hours required for continuing education and as noted above, has made an administrative correction to the proposed rules to change the number of hours required from eight to four to ensure consistency with new proposed §68.74.

The Department notes that the individual's submission is not a comment on the proposal but a request for clarification regarding §68.75(c). Technical guidance will be provided by program staff. The Department did not make any changes to the proposed rules in response to this submission.

The Department notes that the individual's submission is not a comment on the proposal but a request for clarification regarding §68.75(e). However, the Department appreciates the request and did make an administrative change to the rule to clarify the responsibility of the registered accessibility specialist to update their own contact information.

The Department appreciates the individual's concerns regarding §68.76(c)(2). As noted above, proposed text at §68.76(c)(3) has been changed in the adopted rules to clarify that non-design related review services are not consulting or professional services for purposes of this section.

The Department appreciates the insight on the application of §68.76(c)(3) and the use of third-party consultants as they apply to the proposed rules. As noted above, §68.76(c)(3) has been changed in the adopted rules to clarify that non-design related review services are not consulting or professional services for purposes of this section.

ADVISORY COMMITTEE RECOMMENDATIONS AND COMMISSION ACTION

The Elimination of Architectural Barriers Advisory Committee met on June 7, 2023, to discuss the proposed rules and the public comments received. The Advisory Committee recommended that the Commission adopt the proposed rules as published in the *Texas Register* with changes to existing rules at 16 TAC Chapter 68, Subchapter A, §68.10; Subchapter B, §68.20; Subchapter D, §68.50; and Subchapter F, §68.75 and §68.76; and adopts new rules at Subchapter C, §68.41 and §68.42; Subchapter D, §68.51 and §68.52; and Subchapter F, §68.73 and §68.74 made in response to public comment, Advisory Committee, and Department recommendations. At its meeting on August 1, 2023, the Commission adopted the proposed rules with changes as recommended by the Advisory Committee.

**16 TAC §§68.31, 68.51 - 68.54, 68.73, 68.74, 68.79, 68.100, 68.101**

**STATUTORY AUTHORITY**

The adopted repeals are adopted under Texas Occupations Code, Chapter 51, and Government Code, Chapter 469, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted repeals are those set forth in Texas Occupations Code, Chapters 51, and Texas Government Code, Chapter 469. No other statutes, articles, or codes are affected by the adopted repeals.

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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**SUBCHAPTER A. GENERAL PROVISIONS**

**16 TAC §§68.10 - 68.12**

**STATUTORY AUTHORITY**

The adopted rules are adopted under Texas Occupations Code, Chapter 51, and Government Code, Chapter 469, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, and Texas Government Code, Chapter 469. No other statutes, articles, or codes are affected by the adopted rules.

*§68.10. Definitions.*

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

(1) Act--Texas Government Code, Chapter 469, Elimination of Architectural Barriers.

(2) Alteration-- A renovation, modification, or change to a building or facility that affects or could affect the usability of the building or facility or portion thereof. Re-roofing, painting, or wallpapering, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility.

(3) Building--Any structure located in the State of Texas used or intended for supporting or sheltering any use or occupancy.

(4) Commencement of Construction--The date of placement of engineering stakes, delivery of lumber or other construction materials to the job site, erection of batter boards, formwork, or other construction related work.

(5) Completion of Construction--The date when a construction project results in occupancy or the issuance of a certificate of occupancy. For public roadway projects, completion of construction occurs upon final payment and release of the contractor performing the work or, if the work is performed by public employees, removal of barricades and opening of all traffic lanes for use.

(6) Construction Documents--Drawings, specifications, addenda, change orders, construction change directives and other supplemental documents prepared for the purpose of regulatory approval, permitting, or construction.

(7) Crosswalk--That part of a roadway where motorists are required to yield to pedestrians crossing, as defined by state and local regulations, whether marked or unmarked.

(8) Curb Line--A line that represents the extension of the face of the curb and marks the transition between the sidewalk and the gutter or roadway at a curb ramp or flush landing.

(9) Day--A calendar day.

(10) Department--The Texas Department of Licensing and Regulation.

(11) Designated Agent--An individual designated in writing by the owner to act on the owner's behalf.

(12) Element--An architectural or mechanical component of a building, facility, space, or site, e.g., telephone, curb ramp, door, drinking fountain, seating, water closet, or public right-of-way.

(13) Estimated Construction Cost--Includes all costs for construction of a project except site acquisition, architectural, engineering and consulting fees, furniture, and equipment unless the equipment is part of the mechanical, electrical, or plumbing systems.

(14) Facility--All or any portion of buildings, structures, site improvements, elements, and pedestrian routes or vehicular ways located on a site e.g. complexes, equipment, roads, walks, passageways, parking lots, or other real property subject to the Act.

(15) Housing at a Place of Education--Public or privately funded housing operated by or on behalf of an elementary, secondary, undergraduate, or postgraduate school, or other place of education, including dormitories, suites, apartments, or other places of residence.

(16) Issue--To mail, deliver, transmit, or otherwise release plans or specifications to an owner, lessee, contractor, subcontractor, or any other person acting for an owner or lessee for the purpose of construction, applying for a building permit, or obtaining regulatory approval after such plans have been sealed by an architect, registered interior designer, landscape architect, or engineer. In the case of a state-funded or other public works project, it is the time at which plans or specifications are publicly posted for bids, after such plans or speci-

fications have been sealed by an architect, registered interior designer, landscape architect, or engineer.

(17) Overall Responsibility--The level of responsibility held by an architect, registered interior designer, landscape architect or engineer who prepares construction documents and coordinates the various aspects of the design of a building or facility.

(18) Owner--The person(s) that hold(s) title to the building or facility subject to compliance with the Act, TAS, and this chapter.

(19) Pedestrian Access Route--A continuous and unobstructed path of travel provided for pedestrians with disabilities within or coinciding with a pedestrian circulation path.

(20) Pedestrian Elements--Components that make up a pedestrian access route including, but not limited to walking surfaces, ramps, curb ramps, crosswalks, pedestrian overpasses and underpasses, automated pedestrian signals, elevators, and platform lifts.

(21) Person--An individual, corporation, partnership, or other legal entity, including a state agency or governmental subdivision.

(22) Project File--Records retained, uploaded, or submitted to TABS.

(23) Public Entity--Any state government agency or unit of local government or special purposes district.

(24) Public Right-of-Way--Public land or property, usually in interconnected corridors, that is acquired for or dedicated to transportation purposes.

(25) Registered Accessibility Specialist--An individual who is certified by the department to perform review and inspection functions of the department.

(26) Religious Organization--An organization that qualifies for an exemption from taxation, as a religious organization as provided in Texas Tax Code, Chapter 11, §11.20(c).

(27) Sidewalk--That portion of an exterior circulation path that is improved for use by pedestrians and usually paved.

(28) Texas Accessibility Standards (TAS)--The collection of scoping and technical requirements for accessibility to sites, facilities, buildings, and elements by individuals with disabilities, periodically adopted by the Texas Commission of Licensing and Regulation.

(29) Texas Architectural Barriers Online System (TABS)--The online database for the registration of projects subject to the TAS and maintenance of project records.

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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## SUBCHAPTER B. REGISTRATION REQUIREMENTS; EXEMPTIONS

### 16 TAC §§68.20 - 68.22, 68.30, 68.31

#### STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, and Government Code, Chapter 469, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, and Texas Government Code, Chapter 469. No other statutes, articles, or codes are affected by the adopted rules.

#### §68.20. Buildings and Facilities Subject to Compliance.

(a) All buildings or facilities listed under this section are subject to compliance with the Act, TAS, and this chapter, regardless of the estimated cost of construction, unless exempted under §68.30.

(b) The following buildings and facilities are subject to compliance with the Act, TAS, and this chapter:

(1) A building or facility used by a public entity if it is constructed, renovated, or modified, in whole or in part, on or after January 1, 1970, using funds from the state or a county, municipality, or other political subdivision of the state.

(2) A building or facility leased for use or occupied, in whole or in part, by the state under a lease or rental agreement entered into on or after January 1, 1972, except as modified under §68.22.

(c) The following private buildings and facilities constructed, renovated, or modified on or after January 1, 1992, and defined as a "public accommodation" by Section 301, Americans with Disabilities Act of 1990 (42 U.S.C. Section 12181), and its subsequent amendments are subject to the Act, TAS, and this chapter:

(1) A place of lodging that includes guest rooms for short-term stays of 30 days or less where the occupant does not have the right to return to a specific room or unit after the conclusion of their stay, and under conditions and with amenities similar to a hotel, motel, or inn.

(A) Amenities include:

(i) on or off-site management and reservations service;

(ii) rooms available on a walk-up or call-in basis;

(iii) available housekeeping or linen service; and

(iv) acceptance of reservations for a guest room type without guaranteeing a particular unit or room until checking in, and without prior lease or security deposit.

(B) A place of transient lodging with no more than five rooms for rent or hire that is occupied by the proprietor as the proprietor's primary residence as provided under §68.30 is not subject to this section.

(2) an establishment that serves food or drinks, including a restaurant or bar;

(3) a sports or entertainment venue, including a movie theater, concert hall, stadium, or other place of exhibition or entertainment;

- (4) a public gathering venue, including an auditorium, convention center, or lecture hall;
- (5) a retail establishment or shopping center;
- (6) a service establishment, including a laundromat, dry-cleaner, bank, barber shop, salon, gas station, professional office, medical facility, health care provider, or hospital;
- (7) a public transportation station, including a terminal or depot;
- (8) a place of recreation, including a park, zoo, or amusement park;
- (9) a place of public display or collection, including a museum, library or gallery;
- (10) a place of education, including a day care center, elementary, secondary, undergraduate, or postgraduate private school;
- (11) a social service center establishment, including a senior citizen center, homeless shelter, food bank, or adoption agency;
- (12) a place of exercise or recreation, including a gymnasium, health spa, bowling alley, or golf course;
- (13) a residential amenity space open to the public which is used, leased, or rented to residents, members, non-residents, or non-members; and
- (14) a building or facility that is constructed, renovated, or modified on a temporary or emergency basis including workforce housing, man camps, fixed furniture systems, wall systems, and exhibit areas.

(d) A commercial facility is subject to the Act, this chapter, and compliance with TAS if it is intended for non-residential use by a private entity and its operations will affect commerce, except for railroad locomotives, railroad freight cars, railroad cabooses, commuter or intercity passenger rail cars or any other railroad cars described in the Americans with Disabilities Act (ADA) §242, or covered under the ADA, Title III, railroad rights-of-way, or facilities that are covered or expressly exempted from coverage under the federal Fair Housing Act of 1968.

(e) A building or facility of a religious organization is subject to the Act, this chapter, and compliance with TAS except for areas as provided under §68.30.

*§68.21. Registration of Project or Lease Required.*

(a) Projects registration required. A building or facility being constructed, renovated, or modified with an estimated construction cost of \$50,000 or more that is subject to compliance with the Act, the TAS, and this chapter must be registered with the department. To register a construction project, an owner must submit:

- (1) an application on a form as prescribed by the department; and
  - (2) the required fee in §68.80.
- (b) State lease registration required. A new or renewal lease agreement for an agency of the state of Texas with annual lease expense \$12,000 or more must be registered with the department. To register a lease, a state agency must submit:
- (1) an application on a form as prescribed by the department; and
  - (2) the required fee in §68.80.
- (c) Project registration optional. A building or facility being constructed, renovated, or modified with an estimated construction cost

of less than \$50,000 or that is not subject to the Act may be registered with the department and reviewed and/or inspected by a registered accessibility specialist.

*§68.30. Exemptions.*

The following buildings, facilities, spaces, or elements are exempt from the provisions of the Act:

- (1) Federal Property. Buildings or facilities owned, operated, or leased by the federal government;
- (2) Places Used Primarily for Religious Rituals. An area within a building or facility of a religious organization used primarily for religious ritual as determined by the owner or occupant. To facilitate the plan review, the owner or occupant shall include a clear designation of such areas with the plans submitted for review. This exemption does not apply to the following: parking facilities, accessible routes, walkways, hallways, toilet facilities, entrances, public telephones, drinking fountains, and exits;
- (3) Van Accessible Parking at Garages Constructed Prior to April 1994. Parking garages where construction was started before April 1, 1994, and the existing vertical clearance of the garage is less than 98", are exempted from requirements to have van-accessible parking spaces located within the garage. If additional surface parking is provided, the required van accessible parking spaces shall be located on a surface lot in closest proximity to the accessible public entrance serving the facility;
- (4) Residential Facilities. Those portions of public or privately funded apartments, condominiums, townhomes, and single-family dwellings used exclusively by residents and their guests; and
- (5) Places of Primary Residence. An establishment or place of lodging that does not have more than five rooms for rent or hire and that is occupied by the proprietor as their primary residence.

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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**SUBCHAPTER C. OWNER RESPONSIBILITIES**

**16 TAC §§68.40 - 68.42**

**STATUTORY AUTHORITY**

The adopted rules are adopted under Texas Occupations Code, Chapter 51, and Government Code, Chapter 469, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, and Texas

Government Code, Chapter 469. No other statutes, articles, or codes are affected by the adopted rules.

*§68.41. Inspection Required.*

(a) The owner of a building or facility with a project required to be registered under §68.21 must obtain an inspection by a registered accessibility specialist no later than one year from the date of the completion of construction.

(b) A request for inspection must be in writing and submitted to a registered accessibility specialist.

(c) The owner, the owner's designated agent, or an individual representing the owner is required to be physically onsite with the registered accessibility specialist during the inspection. A physical or electronic signature must be provided by the owner or designated agent who was present during the inspection on a form prescribed by the department.

*§68.42. Designated Agent.*

(a) An owner may designate an agent to act on their behalf by submitting a form prescribed by the department. To be valid, the form must be complete and signed by the owner or an individual employed by the owner. A parent or other person associated with the owner is not authorized to submit or sign the form on behalf of the owner.

(b) A designated agent is authorized to:

- (1) submit project information changes;
- (2) request a waiver or variance;
- (3) make a request for inspection;

(4) communicate with the department on behalf of the owner about the registered project;

(5) receive communications from a registered accessibility specialist; and

(6) submit verification of corrections to a registered accessibility specialist and the department.

(c) A designated agent's failure to comply with the requirements of this chapter on behalf of an owner does not excuse the owner from compliance with the Act, this chapter, and the TAS.

(d) A form must be submitted for each project registered to designate the agent, regardless of whether all the projects are in the same building.

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**SUBCHAPTER D. CONSTRUCTION DOCUMENTS; INSPECTIONS; COMPLIANCE**

**16 TAC §§68.50 - 68.53**

**STATUTORY AUTHORITY**

The adopted rules are adopted under Texas Occupations Code, Chapter 51, and Government Code, Chapter 469, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, and Texas Government Code, Chapter 469. No other statutes, articles, or codes are affected by the adopted rules.

*§68.50. Submission of Construction Documents.*

(a) If the estimated construction cost is \$50,000 or more, all plans and specifications for the construction of or alteration to a building or facility subject to §469.101 of the Act must be submitted by a design professional along with a form prescribed by the department to a registered accessibility specialist not later than the twentieth day after the plans and specifications are issued. In computing time under this section, Saturday, Sunday, and legal holidays are not included. All plans may be submitted in electronic format.

(b) When there is not a design professional with overall responsibility, the owner of a building or facility must submit the construction documents to a registered accessibility specialist prior to filing an application for building permit or commencement of construction in an unincorporated portion of a county that does not issue building permits.

(c) An owner or design professional may submit revised construction documents to a registered accessibility specialist to review, including change orders, addenda, or letters.

(d) Construction documents provided to the department become the property of the department and will not be returned.

*§68.51. Plan Review Requirements.*

(a) Prior to performing a plan review or plan revision review, a registered accessibility specialist must have project construction documents for the building or facility.

(b) An owner may submit revised or supplemental construction documents for review. Upon receipt, a registered accessibility specialist must verify the date of construction completion in writing with the owner. Revised or supplemental construction documents submitted to the registered accessibility specialist:

(1) prior to the recorded estimated completion of construction must be reviewed as part of a plan revision; or

(2) after completion of construction based on the estimated completion of construction are not required to be reviewed but must be uploaded in the TABS project file.

(c) After review of construction documents, the registered accessibility specialist must provide the owner or the owner's designated agent and the design professional making the submission the plan review findings no later than 30 days from the date of the report. All plan review findings must be uploaded in TABS.

(d) A plan review or plan revision review report must be type-written and include, at a minimum:

(1) a title indicating whether the report is a "Plan Review Report" or "Plan Revision Review Report;"

(2) the name and certification number of the registered accessibility preparing the report;

(3) date of the report;



- (4) TABS project number issued by the department;
- (5) facility name;
- (6) project name and address; and
- (7) a detailed list of each deficiency, including a reference to the TAS section number, if applicable.

§68.52. *Inspections and Corrective Modifications.*

(a) Prior to performing an inspection, a registered accessibility specialist must have access to the project in TABS and a written request for inspection from the owner or the owner's designated agent.

(b) To be valid, the owner, the owner's designated agent, or an individual representing the owner is required to be present during the inspection. The individual onsite during the inspection must provide a physical or electronic signature on the inspection form prescribed by the department.

(c) A registered accessibility specialist must complete an inspection report no later than 30 days from the date of the inspection. An inspection report must be:

- (1) provided to the owner within 30 days of the date of the report;
- (2) uploaded in TABS;
- (3) typewritten and include, at a minimum:
  - (A) heading titled "Inspection Report;"
  - (B) the name and certification number of the registered accessibility preparing the report;
  - (C) date of the report;
  - (D) date of the inspection;
  - (E) TABS project number issued by the department;
  - (F) facility name;
  - (G) project name and address; and
  - (H) violations cited in detailed, followed by the TAS section number, including specific information identifying the location of each violation.

(d) If corrective modifications are required to achieve compliance the owner must:

- (1) respond to the inspection report by submitting a form prescribed by the department to the registered accessibility specialist not later than the 30th day of the date of the inspection report; and
- (2) complete corrective modifications by the 270th day after the date of the inspection report.

(e) The owner's corrective modification response must be uploaded in TABS not later than the 30th calendar day after receipt.

§68.53. *Transmittal Letters.*

(a) A transmittal letter must be provided to an owner no later than the 30th day after the completion of a plan review, plan revision, or inspection and uploaded in TABS.

(b) A transmittal letter must be typewritten and include, at a minimum:

- (1) date of the report;
- (2) the name and certification number of the registered accessibility preparing the letter;
- (3) owner name and address;

- (4) TABS project number issued by the department;
- (5) project name, facility name, and address;
- (6) results paragraph, as applicable;
- (7) owner action paragraph, as applicable; and
- (8) disclaimer paragraph, as applicable.

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## SUBCHAPTER F. REGISTERED ACCESSIBILITY SPECIALISTS

### 16 TAC §§68.70, 68.73 - 68.77

#### STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, and Government Code, Chapter 469, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, and Texas Government Code, Chapter 469. No other statutes, articles, or codes are affected by the adopted rules.

§68.70. *Registered Accessibility Specialist Certification--Eligibility, Qualifications, and Application Requirements.*

(a) A person may not perform or offer to provide plan review or inspection services unless the person is a certified registered accessibility specialist. To be certified, an individual must:

- (1) meet one of the following qualifications:

(A) hold a degree in architecture, engineering, interior design, landscape architecture, or equivalent, and at least one year experience related to building inspection, building planning, accessibility design or review, accessibility inspection, or equivalent;

(B) have at least eight years of experience related to building inspection, building planning, accessibility design or review, accessibility inspection, or equivalent; or

(C) have at least four years of experience related to building inspection, building planning, accessibility design or review, accessibility inspection, or equivalent, and certification by a model building code organization as an accessibility inspector or plans examiner;

- (2) pass an examination approved by the department;

- (3) successfully pass a criminal history background check;

and

(4) submit the required fee under §68.80.

(b) An applicant must submit the following required documentation in a manner prescribed by the department:

(1) a complete application on a department approved form; and

(2) verifiable evidence that the applicant meets the requirements in subsection (a)(1).

(c) Each applicant who satisfies all requirements will be provided a wallet card and a wall certificate. The wallet card is the actual certificate of registration.

(d) An applicant must complete all requirements, including passing the examination in subsection (a)(2), no later than one year from the date the application is submitted. After that year the applicant will be required to submit a new application and all required materials in addition to paying a new application fee.

*§68.73. Registered Accessibility Specialist Certification--Renewal Requirements.*

(a) To renew a certification, a registered accessibility specialist must:

(1) submit a complete renewal application in a manner prescribed by the department;

(2) successfully pass a criminal history background check;

(3) complete four hours of continuing education as required under §68.74; and

(4) submit the required fee under §68.80.

(b) A registered accessibility specialist with an expired certification shall not perform work requiring registration under the Act.

(c) A certification will not be renewed until continuing education requirements have been met.

*§68.74. Continuing Education.*

(a) To renew a certification, a registered accessibility specialist must complete four hours of continuing education as provided in this section.

(b) To meet the requirements of this section, continuing education hours must include instruction in one or more of the following topics:

(1) Texas Government Code, Chapter 469, Elimination of Architectural Barriers;

(2) 16 Texas Administrative Code, Chapter 68 - Administrative Rules;

(3) 2012 Texas Accessibility Standards;

(4) technical memoranda published by the department;

(5) 2010 Standards for Accessible Design or other accessibility guidelines proposed or adopted by the Access Board or United States Department of Justice;

(6) Americans with Disabilities Act;

(7) International Code Council/American National Standards Institute (ANSI) A117.1 Standard on Accessible and Usable Buildings and Facilities; or

(8) life safety codes related to egress.

(c) A registered accessibility specialist must certify completion of continuing education hours at the time of renewal in a manner prescribed by the department.

(d) Continuing education hours must have been completed within the term of the current certification, in the case of a timely renewal. For a late renewal, the continuing education hours must have been completed within the one-year period immediately prior to the date of renewal.

(e) A registered accessibility specialist will not receive continuing education credit for attending the same course more than once during the one-year period in which the course is offered.

(f) A registered accessibility specialist must retain a copy of the certificate of completion for a course for three years after the date of completion. In conducting an inspection or investigation of a registered accessibility specialist, the department may examine the registered accessibility specialist's records to determine compliance with this section.

(g) This section applies to certifications that expire on or after September 1, 2023.

*§68.75. Responsibilities of the Registered Accessibility Specialist.*

(a) A registered accessibility specialist may set and collect fees for services rendered but must submit to the department fees received on behalf of the department no later than 30 days after receipt.

(b) A registered accessibility specialist must secure written authorization:

(1) from an owner prior to performing a plan review, inspection, or related activity of a building or facility with an estimated construction cost of less than \$50,000 or that is not subject to the Act; and

(2) from the department prior to performing a plan review, inspection, or related activity for a building or facility that will be leased or occupied by an agency of the State of Texas.

(c) A registered accessibility specialist must maintain project files for a period of one year following the closure of the project in TABS.

(d) A registered accessibility specialist is required to upload a change in the estimated date of completion of construction within 30 days of receipt from the owner.

(e) A registered accessibility specialist must provide written notification to the department of changes to their contact information within 30 calendar days of a change occurring.

*§68.76. Standards of Conduct.*

(a) Competency. A registered accessibility specialist shall ensure compliance, be knowledgeable of, and adhere to the Act, the TAS, and this chapter. A registered accessibility specialist shall exercise reasonable judgment and skill in the performance of plan reviews, inspections, and related activities.

(b) Integrity. A registered accessibility specialist shall not:

(1) be deceitful or make misrepresentations, whether by acts of commission or omission, in the performance of plan review, inspection, and related activities; or

(2) commit acts or practices that constitute threats, coercion, or extortion.

(c) Conflict of Interest.

(1) If a registered accessibility specialist has any business association or financial interest which might reasonably appear to influence the individual's judgment in connection with the performance of a professional service and thereby jeopardize an interest of the registered accessibility specialist's current or prospective client or employer,

the registered accessibility specialist shall promptly inform the client or employer in writing of the circumstances of the business association or financial interest.

(2) A registered accessibility specialist shall not solicit or accept, directly or indirectly, any financial or other valuable consideration, material favor, or other benefit of any substantial nature, financial or otherwise, from more than one party in connection with a single project or assignment unless the circumstances are fully disclosed in writing to all parties.

(3) A registered accessibility specialist shall not perform plan reviews, inspections, or related activities, such as preliminary plan reviews or pre-construction site assessments, while also providing consulting or other professional services on the same registered project. Non-design related review services are not consulting or professional services for the purposes of this section.

(d) Specific Rules of Conduct. A registered accessibility specialist shall not:

(1) participate, whether individually or in concert with others, in any plan, scheme, or arrangement attempting or having as its purpose the evasion of any provision of the Act, the rules, or the TAS;

(2) knowingly furnish inaccurate, deceitful, or misleading information to the department, a building owner, or other person involved in a plan review, inspection, or related activity;

(3) state or imply that the department will approve a variance;

(4) engage in any activity that constitutes dishonesty, misrepresentation, or fraud while performing a plan review, inspection, or related activity;

(5) perform a plan review, inspection, or related activity in a negligent or incompetent manner;

(6) perform a plan review, inspection, or related activity on a building or facility in which the registered accessibility specialist is an owner, either in whole or in part, or an employee of a full or partial owner;

(7) perform a plan review, inspection, or a related activity on a building or facility that is or will be leased or occupied by an agency of the State of Texas, when the registered accessibility specialist is an employee of the state agency that will occupy the facility;

(8) perform a plan review, inspection, or related activity on a building or facility wherein the registered accessibility specialist participated in creating the overall design of the current project; or

(9) represent himself or herself as an employee of the department or as a person hired by the department.

*§68.77. Shared Services.*

(a) A registered accessibility specialist may engage the services of another registered accessibility specialist to perform services on their behalf.

(b) Each registered accessibility specialist engaged in shared services must:

(1) be actively certified with the department;

(2) complete the assigned plan review or inspection within 30 days of accepting the project in TABS; and

(3) not alter the work product of the other registered accessibility specialist, which includes making amendments to a plan review, inspection report, or corrective modification letter.

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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Doug Jennings

General Counsel

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



## SUBCHAPTER H. ENFORCEMENT

### 16 TAC §68.90, §68.93

#### STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, and Government Code, Chapter 469, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, and Texas Government Code, Chapter 469. No other statutes, articles, or codes are affected by the adopted rules.

*§68.93. Complaints, Investigations, and Audits.*

(a) Complaints. A complaint may be filed against an owner if there is reason to believe that a building or facility is not in compliance with the Act, the rules, or the TAS. A complaint may be filed against a registered accessibility specialist if there is reason to believe that the registered accessibility specialist has violated the Act, the rules, procedures, or the TAS.

(b) Investigations and Audits. Owners of buildings and facilities subject to compliance with the Act, TAS, and this chapter, are subject to investigation by the department. Registered accessibility specialists are subject to investigation and audit by the department.

(c) Inspection of Records. Records pertaining to a project for which plan review, inspection, or related activities have been or will be performed, must be made available by the registered accessibility specialist for inspection upon request. Records must be uploaded in TABS within 14 calendar days of receiving a written request from the department, or within a time prescribed by the department.

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

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## CHAPTER 73. ELECTRICIANS

### 16 TAC §73.100

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 73, §73.100, regarding the Electricians program, without changes to the proposed text as published in the April 28, 2023, issue of the *Texas Register* (48 TexReg 2172). These rules will not be republished.

#### EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 73, implement Texas Occupations Code, Chapter 1305, Electricians.

The adopted rule is necessary to adopt the 2023 National Electrical Code (NEC) as required by statute. Texas Occupations Code §1305.101(a) requires the Commission to adopt, every three years, the revised NEC as the electrical code for the state. The current rule references the 2020 edition of the NEC.

#### SECTION-BY-SECTION SUMMARY

The adopted rule amends §73.100, Technical Requirements, by adopting the 2023 edition of the NEC effective September 1, 2023, and repealing subsection (b) of the current rule.

#### PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the April 28, 2023, issue of the *Texas Register* (48 TexReg 2172). The public comment period closed on May 30, 2023. The Department received comments from four interested parties on the proposed rules. The public comments are summarized below.

Comment: One commenter stated support for the proposed repeal of §73.100(b).

*Department Response:* The department appreciates the comment. The Department did not make any changes to the proposed rules based on this comment.

Comment: One commenter had a question about examination procedures.

*Department Response:* The comment was forwarded to the Customer Service division for response. The Department did not make any changes to the proposed rules based on this comment.

Comment: One commenter had a question about the status of an application.

*Department Response:* The comment was forwarded to the Customer Service division for response. The Department did not make any changes to the proposed rules based on this comment.

Comment: One commenter submitted a certificate showing completion of a continuing education course.

*Department Response:* The comment was forwarded to the Customer Service division for response. The Department did not make any changes to the proposed rules based on this comment.

#### ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Electrical Safety and Licensing Advisory Board met on June 26, 2023, to discuss the proposed rules and the public comments

received. The Advisory Board recommended that the Commission adopt the proposed rules as published in the *Texas Register*. At its meeting on August 1, 2023, the Commission adopted the proposed rules as recommended by the Advisory Board.

#### STATUTORY AUTHORITY

The adopted rule is adopted under Texas Occupations Code, Chapters 51 and 1305, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rule are those set forth in Texas Occupations Code, Chapters 51 and 1305. No other statutes, articles, or codes are affected by the adopted rule.

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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Doug Jennings

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## CHAPTER 75. AIR CONDITIONING AND REFRIGERATION

### 16 TAC §75.100

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 75, §75.100, regarding the Air Conditioning and Refrigeration Contractors (ACR) program, without changes to the proposed text as published in the April 28, 2023, issue of the *Texas Register* (48 TexReg 2173). These rules will not be republished.

#### EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 75, implement Texas Occupations Code, Chapter 1302, Air Conditioning and Refrigeration Contractors.

The adopted rule is necessary to remove outdated language related to the 2020 National Electrical Code (NEC) that was included in the ACR program rules. Texas Occupations Code §1305.101(a) requires the Commission to adopt, every three years, the revised NEC as the electrical code for the state. The Department proposed rules under the Electricians program to adopt the 2023 NEC (see separate rulemaking). The language related to the 2020 NEC is no longer necessary to be included in the ACR program rules.

#### SECTION-BY-SECTION SUMMARY

The adopted rule amends §75.100, Technical Requirements, by repealing subsection (a)(5).

#### PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules

were published in the April 28, 2023, issue of the *Texas Register* (48 TexReg 2173). The public comment period closed on May 30, 2023. The Department received comments from two interested parties on the proposed rules. The public comments are summarized below.

Comment: One commenter expressed confusion about the rule and sought clarification regarding whether the proposed rule would require licensees to take additional continuing education courses.

*Department Response:* The Department appreciates the comment. The proposed rule will not require licensees to take any additional continuing education courses. The Department did not make any changes to the proposed rules based on this comment.

Comment: One commenter stated that all electrical work should be completed by a licensed and qualified professional electrician.

*Department Response:* The Department appreciates the comment. The Department did not make any changes to the proposed rules based on this comment.

#### COMMISSION ACTION

At its meeting on August 1, 2023, the Commission adopted the proposed rules as published in the *Texas Register*.

#### STATUTORY AUTHORITY

The adopted rule is adopted under Texas Occupations Code, Chapters 51 and 1302, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rule are those set forth in Texas Occupations Code, Chapters 51 and 1302. No other statutes, articles, or codes are affected by the adopted rule.

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

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## CHAPTER 97. MOTOR FUEL METERING AND QUALITY

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 97, Subchapter A, §97.3; Subchapter B, §97.23; Subchapter D, §97.56; Subchapter E, §97.70 and §97.74; and the repeal of Subchapter G, §§97.90 - 97.95, regarding the Motor Fuel Metering and Quality program, without changes to the proposed text as published in the March 24, 2023, issue of the *Texas Register* (48 TexReg 1612). These rules will not be republished.

The Commission also adopts amendments to existing rules at 16 TAC, Chapter 97, Subchapter A, §97.2; Subchapter B, §97.25, and §97.29; Subchapter D, §97.59; and adopts new rules at Subchapter B, §97.30 and §97.31, regarding the Motor Fuel Metering and Quality program, with changes to the proposed text as published in the March 24, 2023, issue of the *Texas Register* (48 TexReg 1612). These rules will be republished.

Included elsewhere in this issue of the *Texas Register*, the Commission also withdraws proposed amendments to existing rules at 16 TAC, Chapter 97, Subchapter B, §§97.20 - 97.22, and §97.27; and withdraws proposed new rules at Subchapter B, §97.32 and §97.33 as published in the March 24, 2023, issue of the *Texas Register* (48 TexReg 1612).

#### EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 97, implement Texas Occupations, Chapter 2310, Motor Fuel Metering and Quality.

The adopted rules update definitions applicable to the program, clarify the standards applicable to fuel quality, and add merchant and consumer protections from card fraud. The adopted rules are necessary to implement legislative changes from House Bill (HB) 2106, 87th Legislature, Regular Session (2021), related to payment card skimmers on motor fuel devices.

#### SECTION-BY-SECTION SUMMARY

The adopted rules amend §97.2, Definitions. The adopted rules add a definition for "tamper-evident security label." The adopted rules include Advisory Board recommended changes to the published rule text at paragraphs (11) and (14) to remove proposed amendments to the definition of "merchant," and removal of the proposed term "operator," respectively. The rules have been renumbered accordingly.

The adopted rules amend §97.3, Adoption by Reference. The adopted rules update and clarify the standards applicable to motor fuel.

The adopted rules amend §97.23, Device Performance Review Requirements. The adopted rules clarify that a device performance review may only be performed by a licensed service company and removes references to the September 1, 2020, the effective date of the section included when the rules were adopted after the program was transferred to the department.

The adopted rules amend §97.25, Consumer Information Sticker. The adopted rules remove the reference to the December 1, 2020, effective date for implementation of the section that was originally included when the rules were adopted following the program transfer. The adopted rules include Department recommended changes to the published rule text at subsection (b) to replace the proposed term "merchant" with the original phrase "owner or operator."

The adopted rules amend §97.29, Discovery of Payment Card Skimmers. The adopted rules retitle the section to "Detection and Reporting of Payment Card Skimmers," and prescribe the timeline and process a merchant must follow for reporting the discovery of a skimmer to law enforcement and the department after the discovery. The adopted rules include Department recommended changes to the published rule text at subsections (a), (b), and (c) to replace the proposed term "merchant" with the original phrase "owner or operator." The adopted rules also include Advisory Board recommended changes to the published rule text at subsection (a)(3) to clarify the process for submitting law enforcement report case numbers to the department; and

(a)(4) to specify how to place a device out of order pending removal of a skimmer.

The adopted rules add new §97.30, Unauthorized Removal of Skimmers Prohibited. The adopted rules prohibit the removal of a skimmer unless instructed to do so by law enforcement or the department and include requirements for how the skimmer must be removed. The adopted rules include Department recommended changes to the published rule text at subsections (a), (b), and

(d) to replace the proposed term "merchant" with the phrase "owner or operator." The adopted rules include further changes to the published rule text at subsection (b) to simplify the proposed language and provide that a skimmer may be removed 48 hours after notifying the Department.

The adopted rules add new §97.31, Device Security for Motor Fuel Devices. The adopted rules require an owner or operator to take measures to protect each device using at least two preventative measures. The adopted rules include Department recommended changes to the published rule text to replace the proposed term "merchant" with the phrase "owner or operator." The adopted rules also include Advisory Board recommended changes to the published rule text at paragraph (2)(C) to remove the requirement to document and maintain inspection logs, and at paragraph (6)(A) to require an owner or operator utilizing video camera systems to record video of the forecourt at all times.

The adopted rules amend §97.56, Service Technician License Requirements-Renewal. The adopted rules standardize the terminology for license holders with other department rules.

The adopted rules amend §97.59, Inspection for Payment Card Skimmers. The adopted rules prohibit the removal of a skimmer unless instructed to do so by law enforcement or the department and include requirements for how the skimmer must be removed. The adopted rules include Department recommended changes to the published rule text which replace the terms "merchant," and "dealer" from subsection (b)(1), and the term "merchant" from subsection (d) with the phrase "owner or operator." This change was made throughout the chapter for consistency. The adopted rules also include Department recommended changes to the published rule text at subsection (e) which replaces the term "individual" with "service technician" to clarify who is subject to the section.

The adopted rules also include Advisory Board recommended changes to the published rule text at subsection (d) to simplify proposed language and provide that a skimmer may be removed 48 hours after notifying the Department.

The adopted rules amend §97.70, Device Fees, to correct a clerical error.

The adopted rules amend §97.74, Fee Policy, to standardize formatting for consistency with other department rules.

The adopted rules repeal §97.90, Definitions, by removing common definitions not used in the chapter and relocates applicable definitions into §97.2, Definitions.

The adopted rules repeal §97.91, Policies, Procedures, and Training, which have been incorporated into §97.33, Fraud Awareness Training, as discussed above.

The adopted rules repeal §97.92, Minimum Practices for Prevention of Skimmers, which have been incorporated into §97.29, Detection and Reporting of Payment Card Skimmers, and §97.31, Device Security for Motor Fuel Devices, §97.32, Inspection and

Maintenance Logs, and §97.33, Fraud Awareness Training, as discussed above.

The adopted rules repeal §97.93, Additional Practices for the Prevention of Skimmers at Medium-risk Places of Business, which removes requirements that add practices for medium-risk places of business as well as punitive and onerous tasks, creating a financial burden, for example by requiring the installation of electronic monitoring devices by merchants who are victims of skimmer fraud, instead shifting efforts proactively to prevent unauthorized device access and installation of skimmers.

The adopted rules repeal §97.94, Additional Practices for the Prevention of Skimmers at High-risk Places of Business, which removes requirements that add practices for high-risk places of business as well as punitive and onerous tasks, creating a financial burden by requiring the installation of video cameras and lights around each device for merchants who are victims of skimmer fraud, instead shifting efforts proactively to prevent unauthorized device access and installation of skimmers.

The adopted rules repeal §97.95, which has been incorporated into §97.29, Detection and Reporting of Payment Card Skimmers, as discussed above.

## PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the March 24, 2023, issue of the *Texas Register* (48 TexReg 1612). The public comment period closed on April 24, 2023. The Department received comments from three interested parties on the proposed rules.

*Comment:* The Department received two comments submitted by the same individual regarding options for compliance with the fraud awareness training requirements in the proposed rules. Specifically, one of the submitted comments inquired whether the Department would authorize an organization to conduct its own training and maintain its own documentation.

*Department Response:* The Department thanks the individual for their questions regarding the proposed rules. The Department notes that it has withdrawn the proposed rule.

*Comment:* The Department received a question from an individual that was non-responsive to the substance of the proposal.

*Department Response:* The Department notes that the individual's question is issue-specific and will not be addressed in this preamble. The Department did not make any changes to the proposed rules in response to this comment.

*Comment:* The Department received comments from the Texas Food and Fuel Association (TFFA). TFFA submitted comments regarding §§97.2, 97.29, 97.30, and §§97.32 - 97.33.

TFFA submitted comments regarding proposed §97.2, stating that the removal of the term "operator" could be detrimental to regulation due to the complexity of relationships between owners and operators. TFFA requested that the rule be withdrawn.

TFFA submitted comments regarding the use of the amended definition of "merchant" throughout proposed §97.29 in relation to the responsibility for compliance with detection and reporting of skimmers. TFFA noted that a skimmer may only be removed by a "licensed technician" hired by the "merchant." Finally, TFFA commented that the 72-hour timeline that a pump must remain out of service could be a deterrent for compliance with the rule.

TFFA submitted comments regarding §97.30 which align with their concerns presented regarding §97.29. TFFA states that often law enforcement agencies are unable or unwilling to respond to reports of skimmers, leaving them out of business for up to 72 hours prior to the skimmer being removed.

TFFA commented that §97.32 regarding Inspection and Maintenance Logs is unnecessary as many owners currently have technology in place to detect and notify in the event that a breach occurs.

TFFA submitted its comment in opposition of §97.33, relating to Fraud Awareness Training. While they are not opposed to the training overall, TFFA's is opposed to the rule based on the lack of detail regarding what will be required as part of the training program.

*Department Response:* The Department thanks the TFFA for their comments. The Department will address each comment in order, separately.

The Department agrees with the comments and appreciates the insight on the fuel industry's use of the terms "owner" and "operator" as they apply to the proposed rules. The Department agrees with the suggestion to withdraw the proposed amendment to the definition of "merchant" in §97.2(11), to allow further discussion with industry stakeholders and the Advisory Board. The Department has withdrawn proposed changes to §97.2(11) and §97.2(14), which would have amended the definition of "merchant" and removed the term "operator," respectively.

The Department has withdrawn proposed amendments to §97.2 regarding the term "merchant." No additional changes have been made to §97.29, Detection and Reporting of Payment Card Skimmers, in response to TFFA's comment regarding responsibility for merchants. To ensure consistency throughout the chapter, the Department has removed the requirement limiting removal of a skimmer to a "licensed service technician." The Department appreciates the insight regarding the timeline prior to removal of a skimmer after reporting to the Department and law enforcement. To ensure compliance with the rule and the spirit of the law to preserve the chain of custody to the extent possible, the timeline for an owner or operator to remove a skimmer has been reduced to 48-hours to allow sufficient time for the Department or law enforcement to respond while ensuring they can resume business operations in a reasonable amount of time.

The Department appreciates the TFFA's concern regarding the timeline prior to removal of a skimmer presented in §97.30. To ensure compliance with the rule and the spirit of the law to preserve the chain of custody to the extent possible, the timeline for an owner or operator to remove a skimmer has been reduced to 48-hours to allow sufficient time for the Department or law enforcement to respond while ensuring they can resume business operations in a reasonable amount of time.

The Department agrees with TFFA's suggestion regarding §97.32, Inspection and Maintenance Logs, and will work with the Advisory Board and stakeholders to continue the dialogue regarding this issue and has withdrawn the rule.

The Department agrees with TFFA's suggestion regarding §97.33, relating to Fraud Awareness Training, and will work with the Advisory Board and stakeholders to continue the dialogue regarding this issue and has withdrawn the rule.

#### ADVISORY BOARD RECOMMENDATIONS

The Motor Fuel Metering and Quality Advisory Board met on May 16, 2023, to discuss the proposed rules and the public comments received. The Motor Fuel Metering and Quality Advisory Board recommended that the Commission adopt the proposed rules as published in the *Texas Register* with changes to §§97.2, 97.25, 97.29, 97.30, 97.31, and 97.59, made in response to public comment and Department recommendations as explained in the Section-by-Section Summary.

## SUBCHAPTER A. GENERAL PROVISIONS

### 16 TAC §97.2, §97.3

#### STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 2310, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 2310. No other statutes, articles, or codes are affected by the adopted rules.

#### §97.2. Definitions.

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

(1) ASTM--ASTM International; the national voluntary consensus standards organization formed for the development of standards on characteristics and performance of materials, products, systems and services and the promotion of related knowledge.

(2) Code--The Texas Occupations Code, Chapter 2310, "Motor Fuel Metering and Quality."

(3) Commission--Texas Commission of Licensing and Regulation.

(4) Controlling person--an individual who:

(A) is a sole proprietor;

(B) is a general partner of a partnership;

(C) is a controlling person of a business entity that is a general partner of a partnership;

(D) possesses direct or indirect control of at least 25 percent of the voting securities of a corporation;

(E) is the president, the secretary, or a director of a corporation; or

(F) possesses the authority to set policy or direct the management of a business entity.

(5) Department--Texas Department of Licensing and Regulation.

(6) Device--A commercial weighing or measuring device used for motor fuel sales, also defined as a motor fuel metering device by §2310.001(7) of the Code.

(7) Device performance review (DPR)--The comprehensive inspection and testing of a motor fuel metering device to ensure it is calibrated and operating according to NIST and Manufacturer specifications.

(8) Gasoline--A liquid or combination of liquids blended together, offered for sale, sold, used, or capable of use as fuel for a gasoline-powered engine. The term includes gasohol, aviation gaso-

line, and blending agents, but does not include compressed natural gas, liquefied natural gas, racing gasoline, diesel fuel, aviation jet fuel, or liquefied gas, as defined in §162.001(29) of the Texas Tax Code.

(9) GPM--Gallons per minute.

(10) ISO--International Organization for Standardization; an independent, non-governmental organization that develops voluntary international standards to facilitate world trade by providing common standards among nations.

(11) Merchant--A person whose business includes the sale of motor fuel through motor fuel metering devices, as defined by §607.001(4) of the Texas Business and Commerce Code.

(12) Motor fuel--Gasoline, diesel fuel, gasoline blended fuel, compressed natural gas, liquefied natural gas, and other products that are offered for sale, sold, used, or capable of use as fuel for a gasoline-powered engine or a diesel-powered engine, as defined in §162.001(42) of the Texas Tax Code.

(13) NIST--The National Institute of Standards and Technology; a non-regulatory federal agency under the United States Department of Commerce, which certifies and provides standard reference materials used to perform instrument calibrations, verifies the accuracy of specific measurements and supports the development of new measurement methods.

(14) Operator--A person in possession or control of a weighing or measuring device, as defined in 2310.001(8) of the Code.

(15) Skimmer--A wire or electronic device that is capable of unlawfully intercepting electronic communications or data to perpetrate fraud, as defined by §607.001(8) of the Texas Business and Commerce Code.

(16) Tamper-evident security label--A label or tape that, once applied to a surface, cannot be removed without self-destructing, or otherwise leaving a clear indication that the label or tape has been removed.

(17) Test standard--A certified weight or measure used to test a device for accuracy.

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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## SUBCHAPTER B. MOTOR FUEL METERING DEVICES

### 16 TAC §§97.23, 97.25, 97.29 - 97.31

#### STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 2310, which authorize the Texas Commission

of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 2310. No other statutes, articles, or codes are affected by the adopted rules.

#### §97.25. *Consumer Information Sticker.*

(a) A consumer information sticker with the department's contact information and current motor fuel tax rates, must be placed on each face of all motor fuel dispensers.

(b) If any part of the information on the sticker is no longer fully legible and in plain sight of the consumer, it must be replaced within 30 days of the date the owner or operator discovers the condition.

(c) A consumer information sticker must not be placed in a manner that affects the accuracy, readability, or lawful operation of a device.

(d) This section does not apply to a device on a transport vehicle.

#### §97.29. *Detection and Reporting of Payment Card Skimmers.*

(a) An owner or operator who discovers or is notified of the presence of a skimmer by a service technician or employee must:

(1) immediately make a report to local law enforcement that a skimmer has been discovered and is still installed in the device;

(2) notify the department within 24 hours of the discovery on a form prescribed by the department;

(3) request the law enforcement report or case number and submit it in a manner prescribed by the department; and

(4) place each affected device out of service and block access to the dispenser to prevent tampering with evidence until the skimmer has been removed as authorized under this chapter.

(b) The owner or operator must cooperate with law enforcement, the department, and the Center in the investigation of a suspected or discovered skimmer.

(c) The owner or operator must provide a copy of available photographic and/or video surveillance of the retail facility to law enforcement.

#### §97.30. *Unauthorized Removal of Skimmers Prohibited.*

(a) In order to preserve evidence and the chain of custody, an owner or operator, retail facility employee, or unlicensed service technician is prohibited from removing a skimmer unless instructed to do so by law enforcement or the department.

(b) If neither law enforcement nor the department has arrived to remove a skimmer within 48 hours after the owner or operator has notified the department as required by §97.29(a)(2), the skimmer may be removed in accordance with subsection (c).

(c) When removing a skimmer under this section, an individual must:

(1) wear sterile gloves while removing the skimmer(s);

(2) place each skimmer in a clear plastic bag, seal the bag, and label the sealed bag with the date and time the skimmer was removed and bagged, along with the initials of the person removing the skimmer; and



(3) transfer the skimmer(s) to local law enforcement and request the law enforcement case or report number.

(d) The owner or operator must provide the law enforcement case or report number to the department in a manner prescribed by the department following transfer of the skimmer to law enforcement.

*§97.31. Device Security for Motor Fuel Devices.*

By January 1, 2024, an owner or operator is required to take two or more of these measures to protect each device:

(1) replace each factory installed universal locking mechanism with a locking device that utilizes a unique device-specific or site-specific key code or combination;

(2) utilize tamper-evident security labels. Tamper-evident security labels must:

(A) be placed over each panel opening that provides access to an interior portion of the device from which the payment terminal or the device can be accessed;

(B) have a unique serial number or unique custom label or easily identifiable custom label or graphic; and

(C) be replaced if damaged, perforated, or peeled;

(3) install a physical barrier, lock, or other physical securing device that restricts access to the electronic financial transaction compartment of the device;

(4) install and maintain monitoring devices or sensors on all doors or panels providing access to an interior portion of the device and associated payment terminal components which emit an audible alarm and/or disable the device when unauthorized access is attempted;

(5) retrofit, upgrade, or replace each device with an enabled EMV-compliant payment terminal that meets the security, interoperability, and functionality specifications issued by EMVCo, LLC; or

(6) install and maintain a high-resolution video camera system and forecourt lighting. To meet the requirements of this section:

(A) the video camera system must record the forecourt area at all times, and the system must retain all videos for 30 days or more. Cameras must be positioned to record:

(i) each device;

(ii) the license plates of vehicles approaching or departing the immediate area around each device; and

(iii) any person interacting with each device at a pixel density of at least 50 pixels per foot; and

(B) lighting must be bright enough to ensure a minimum illumination of 10 lumens per square foot at grade.

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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Doug Jennings

General Counsel

Texas Department of Licensing and Regulation

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SUBCHAPTER D. SERVICE COMPANIES  
AND SERVICE TECHNICIANS

**16 TAC §97.56, §97.59**

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 2310, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 2310. No other statutes, articles, or codes are affected by the adopted rules.

*§97.59. Inspection for Payment Card Skimmers.*

(a) A service technician must inspect for the presence of a skimmer:

(1) during a device performance review; and

(2) each time a motor fuel dispenser is opened to perform device maintenance activities.

(b) A service technician or the service company that employs the technician must report the finding of a skimmer:

(1) immediately to the owner or operator; and

(2) within 24 hours to the department on a form prescribed by the department.

(c) In order to preserve evidence and the chain of custody, a service technician must not remove a skimmer unless instructed by law enforcement or the department.

(d) If neither law enforcement nor the department has arrived to remove a skimmer within 48 hours after the owner or operator has notified the department as required by §97.29, the skimmer may be removed in accordance with subsection (e).

(e) When removing a skimmer under this section, an individual must:

(1) wear sterile gloves while removing the skimmer(s);

(2) place each skimmer in a clear plastic bag, seal the bag, and label the sealed bag with the date and time the skimmer was removed and bagged, along with the initials of the person removing the skimmer; and

(3) transfer the skimmer(s) to local law enforcement and request the law enforcement case or report number.

(f) The service technician must provide the law enforcement case or report number to the department in a manner prescribed by the department following transfer of the skimmer to law enforcement.

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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Doug Jennings  
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Texas Department of Licensing and Regulation  
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For further information, please call: (512) 463-7750



## SUBCHAPTER E. FEES

### 16 TAC §97.70, §97.74

#### STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 2310, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 2310. No other statutes, articles, or codes are affected by the adopted rules.

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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## SUBCHAPTER G. SKIMMERS

### 16 TAC §§97.90 - 97.95

#### STATUTORY AUTHORITY

The adopted repeals are adopted under Texas Occupations Code, Chapters 51 and 2310, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt repeals as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted repeals are those set forth in Texas Occupations Code, Chapters 51 and 2310. No other statutes, articles, or codes are affected by the adopted repeals.

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

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## CHAPTER 115. MIDWIVES

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 115, §§115.1, 115.4, 115.5, 115.13 - 115.15, 115.20, 115.21, 115.23, 115.25, 115.70, 115.80, 115.100, and 115.120; new rules at §§115.2, 115.12, 115.16, and 115.121; and the repeal of existing rules at §§115.2, 115.16, and 115.121; regarding the Midwives program, without changes to the proposed text as published in the April 14, 2023, issue of the *Texas Register* (48 TexReg 1936). These rules will not be republished.

The Commission also adopts a new rule at §115.22, with changes to the proposed text as published in the April 14, 2023, issue of the *Texas Register* (48 TexReg 1936). This rule will be republished.

#### EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 115 implement Texas Occupations Code, Chapter 203, Midwives.

The adopted rules implement changes recommended by Department staff as a result of the four-year rule review conducted under Texas Government Code §2001.039. The adopted rules update requirements relating to approval of basic midwifery education courses, preceptor supervision of student clinical experience, informed client choice and disclosure statements, and retired midwife licenses. The adopted rules also make updates to reflect current Department procedures and remove obsolete or unnecessary language.

The Notice of Intent to Review for Chapter 115 was published in the October 9, 2020, issue of the *Texas Register* (45 TexReg 7281). The public comment period closed on November 9, 2020. At its meeting on March 3, 2021, the Texas Commission of Licensing and Regulation (Commission) readopted Chapter 115 in its entirety without changes. The readoption notice was published in the March 26, 2021, issue of the *Texas Register* (46 TexReg 2050). In response to the Notice of Intent to Review for Chapter 115 that was published, the Department received comments from one interested party requesting rule changes that would not be possible without statutory changes. Therefore, the adopted rules do not include any changes in response to public comments, and all the changes are based on recommendations by Department staff.

#### SECTION-BY-SECTION SUMMARY

The adopted rules amend §115.1, Definitions, by changing the term "approved midwifery education courses" to "basic midwifery education course" and updating its definition to provide clarity and consistency with Occupations Code §203.151; removing the definition for "Code" because the term is not used elsewhere in the rule chapter; adding a definition for "compensation" to provide clarity; adding a definition for "CPR certification" to streamline multiple references throughout the chapter; adding a definition for "direct supervision" to provide clarity; adding a defini-

tion for the acronym "MANA" to streamline multiple references to the Midwives Alliance of North America; adding a definition for the acronym "MEAC" to streamline multiple references to the Midwifery Education Accreditation Council; adding a definition for the acronym "NARM" to streamline multiple references to the North American Registry of Midwives; adding a definition for "preceptor" to provide clarity; removing the definition of "Program" because the term is not used elsewhere in the rule chapter; updating the definition of "retired midwife" to provide clarity and remove the age requirement; correcting a rule reference in the definition of "standing delegation orders"; adding a definition for "student" to provide clarity; and renumbering the remaining definitions accordingly.

The adopted rules repeal current §115.2 and replace it with new §115.2, License Required, to prohibit the unlicensed practice of midwifery.

The adopted rules amend §115.4, Advisory Board Membership, by amending paragraph (1) to provide consistency with Occupations Code §203.052.

The adopted rules amend §115.5, "Terms; Vacancies", by amending subsections (a) and (b) to provide consistency with Occupations Code §203.055.

The adopted rules add new §115.12, General Application Requirements, to streamline requirements for all applications submitted to the Department; add new subsection (a) consisting of language relocated from current §115.13(a) and (a)(1); and add new subsection (b) to require that original or certified copies of documents must be provided upon request by the Department.

The adopted rules amend §115.13, Initial Application for Licensure, by relocating language from subsections (a) and (a)(1) to new §115.12(a); removing subsections (a)(1)(A) through (a)(1)(E), which consist of application details that can instead be addressed in the application forms approved by the Department; updating subsection (a)(2) to provide clarity and correct grammar; relocating and reorganizing the language in current subsection (a)(2) to become new subsection (a)(3); relabeling current subsection (a)(3) to become new subsection (a)(4) and removing the language that repeats the new definition for "CPR certification" in §115.1; relabeling current subsection (a)(4) to become new subsection (a)(5) and adding language to allow the Department to approve a certification that is equivalent to the certification in neonatal resuscitation from the American Academy of Pediatrics; relabeling current subsection (a)(5) to become new subsection (a)(6) and reorganizing its language for clarity; relabeling current subsection (a)(6) to become new subsection (a)(7) and removing unnecessary language; relabeling current subsection (a)(7) to become new subsection (a)(8) and rephrasing its language for clarity and consistency; rephrasing subsection (b) for clarity and consistency; and creating new subsection (f) consisting of language relocated from current §115.2(b). The Advisory Board made a change to subsection (a)(3)(B) by adding "and passing" to clarify that the course and exam must be passed.

The adopted rules amend §115.14, License Renewal, by adding to subsection (a) the word "midwife" to clarify the section's applicability to renewal of a midwife license; removing from subsection (a)(3) language that repeats the new definition for "CPR certification" in §115.1; and adding new subsection (e) to provide that each applicant for renewal of a midwife license must successfully pass a criminal history background check.

The adopted rules amend §115.15, Late Renewal, by rephrasing for clarity and adding references to other Department rules applicable to late renewals.

The adopted rules repeal current §115.16 and replace it with new §115.16, Retired Voluntary Charity Care Status License, consisting of subsection (a) to explain the applicability of the section; subsection (b) to provide the eligibility requirements for a retired voluntary charity care status license; subsection (c) to provide the requirements for an initial application for a voluntary charity care status license; subsection (d) to provide the limitations on the practice of a person holding a retired voluntary charity care status license; subsection (e) to detail the actions for which a person holding a retired voluntary charity care status license will be subject to disciplinary action; subsection (f) to provide for the two-year license term of a retired voluntary charity care status license; subsection (g) to provide the renewal application requirements, the procedures for late renewal, and the prohibition on unlicensed activity for a voluntary charity care status license; and subsection (h) to provide the requirements for a person who holds a retired voluntary charity care status license and wants to return to active status.

The adopted rules amend §115.20, Basic Midwifery Education, by amending the section title for clarity; rephrasing and restructuring the rule language to remove the need for subsection labels; relocating from current subsection (a) to new paragraph (1) the requirement for a course to have a course administrator and site in Texas; relabeling current subsection (b)(2) to become new paragraph (2) and rephrasing its language for clarity; relabeling current subsection (b)(3) to become new paragraph (3) and replacing the names of entities with their corresponding acronyms defined in §115.1; relabeling current subsection (b)(4) to become new paragraph (4) and rephrasing its language for clarity; relabeling current subsection (b)(5) to become new paragraph (5) and rephrasing its language for clarity; relabeling current subsection (b)(6) to become new paragraph (6) and amending its language to provide consistency with the clinical experience requirements for certification by the North American Registry of Midwives (NARM); relabeling current subsection (b)(7) to become new paragraph (7) and removing unnecessary language that repeats the new definition for "preceptor" in §115.1; relabeling current subsection (c) to become new paragraph (8), rephrasing its language for clarity, and removing the language that repeats the new definition for "CPR certification" in §115.1.

The adopted rules amend §115.21, Education Course Approval, by amending the section title for clarity and consistency; rephrasing subsection (a)(1) for clarity and consistency; modifying subsection (a)(1)(D) to require that the financial statement or balance sheet must demonstrate the ability to provide refunds to any students who enroll and removing the requirement to disclose any bankruptcy within the last five years; in subsection (a)(1)(E), adding the requirement for written policies to include entrance requirements, a list of all fees, and the notice required by Occupations Code §53.152 and removing requirements for language and accessibility covered by other state and federal laws; in subsection (a)(2), changing the time period for retention of student files from five years to "three years after the student is no longer enrolled in the course" to provide a more definite time period, clarifying that student files must include CPR certification and progression of course work; amending subsection (a)(3) to clarify the process for initial course approval; rephrasing subsections (a)(4) through (a)(6) for clarity; amending subsection (b) to clarify the approval of courses accredited by MEAC; amending subsection (c) to clarify the duration of course approval and the

process for obtaining a new approval period; amending subsection (d) to require a substantive change in a course to be approved before the change is implemented; and adding new subsection (e) to allow courses to accept transfer hours from other courses and clinical hours earned under a NARM-certified preceptor.

The adopted rules add new §115.22, Preceptor Supervisory Responsibilities, consisting of new subsection (a) to provide the requirements relating to clinical experience activities performed by a student, including direct supervision by a preceptor and informed consent by the client; new subsection (b) to clarify that the student is not practicing midwifery; and new subsection (c) to provide that a licensed midwife acting as a preceptor is responsible for the actions of the student. In response to a recommendation by its Education and Examination workgroup, the Midwives Advisory Board recommended adding language to subsection (a) to clarify that students must always be directly supervised regardless of whether the activities performed are being counted toward the student's education.

The adopted rules amend §115.23, Jurisprudence Examination, by adding new subsection (d) to address administration of the examination, examination fees, reexamination, and notice of examination results, as required by Occupations Code §203.2555(b).

The adopted rules amend §115.25, Continuing Education, by rephrasing and reorganizing for clarity and removing accessibility requirements covered by other state and federal laws.

The adopted rules amend §115.70, Standards of Conduct, by removing the language in current paragraph (1)(L), which authorizes administrative action due to "a lack of personal or professional character in the practice of midwifery" because the standard is vague and subjective; renumbering the remaining provisions in paragraph (1) accordingly; and updating paragraph (3) to clarify that course approval may be suspended or revoked, add loss of MEAC accreditation as a reason for course suspension or revocation, and make cleanup changes for clarity.

The adopted rules amend §115.80, Fees, by updating the names of fees for clarity and consistency and reducing the retired voluntary charity care status license fees in paragraphs (4) and (5) from \$275 to \$0.

The adopted rules amend §115.100, Standards for the Practice of Midwifery in Texas, by making cleanup changes to subsections (a) and (c) for clarity and consistency.

The adopted rules amend §115.120, Newborn Screening, to clarify the requirements relating to a midwife who chooses to collect blood specimens for newborn screening tests, including the required training and submission of the appropriate form to the Department, and removing unnecessary language.

The adopted rules repeal current §115.121 and replace it with new §115.121, Informed Choice and Disclosure Statement, which adds new subsection (a) to require a midwife to use the form prescribed by the Department; adds new subsection (b) to require a midwife to provide the content of the form to a prospective client in both oral and written form before providing any midwifery service; and adds new subsection (c) to require a student performing clinical experience activities to first obtain the informed consent required by new §115.22.

## PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the April 14, 2023, issue of the *Texas Register* (48 TexReg 1936). The public comment period closed on May 15, 2023. The Department did not receive any comments from interested parties on the proposed rules.

## ADVISORY BOARD RECOMMENDATIONS

The Midwives Advisory Board met on June 12, 2023, to discuss the proposed rules and the public comments received. The Advisory Board recommended that the Commission adopt the proposed rules as published in the *Texas Register* with changes to §115.22, made in response to a recommendation by the Education and Examination workgroup of the Advisory Board, as explained in the Section-by-Section Summary.

## 16 TAC §§115.1, 115.2, 115.4, 115.5, 115.12 - 115.16, 115.20 - 115.23, 115.25, 115.70, 115.80, 115.100, 115.120, 115.121

## STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 203, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department. The adopted rules are also adopted under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department. The adopted rules are also adopted under Texas Occupations Code, Chapter 112, which requires the adoption of rules providing for reduced fees and continuing education requirements for a retired health care practitioner whose only practice is voluntary charity care.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 203, and Texas Government Code, Chapter 411, Subchapter F. No other statutes, articles, or codes are affected by the adopted rules.

### §115.22. *Preceptor Supervisory Responsibilities.*

(a) All clinical experience activities performed by a student must be under the direct supervision of a preceptor in accordance with this section.

(1) The student must always be directly supervised regardless of whether the activities are being counted toward the student's education.

(2) The student must perform only the activities authorized by the preceptor.

(3) The student must not advertise, or represent to the public in any way, that the student is a midwife.

(4) The student must not receive compensation from a client for performing supervised activities.

(5) Before any service involving a student is provided to a client:

(A) the client must be informed in writing of:

(i) the requirements of this section;

(ii) the identity and license status of the preceptor and the student;

(iii) the services that will be provided under direct supervision to the client; and

(B) the client must consent in writing to the services being provided under direct supervision.

(b) A student acting under direct supervision in accordance with this section is not practicing midwifery in violation of the requirement to hold a license.

(c) A licensed midwife providing direct supervision of a student is responsible for all actions and liabilities of the student.

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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Doug Jennings

General Counsel

Texas Department of Licensing and Regulation

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



## 16 TAC §§115.2, 115.16, 115.121

### STATUTORY AUTHORITY

The adopted repeals are adopted under Texas Occupations Code, Chapters 51 and 203, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department. The adopted repeals are also adopted under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department. The adopted repeals are also adopted under Texas Occupations Code, Chapter 112, which requires the adoption of rules providing for reduced fees and continuing education requirements for a retired health care practitioner whose only practice is voluntary charity care.

The statutory provisions affected by the adopted repeals are those set forth in Texas Occupations Code, Chapters 51 and 203, and Texas Government Code, Chapter 411, Subchapter F. No other statutes, articles, or codes are affected by the adopted repeals.

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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**TITLE 22. EXAMINING BOARDS**

## **PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS**

### **CHAPTER 80. COMPLAINTS**

#### **22 TAC §80.5**

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §80.5 (Expert Review Process) without changes as published in the July 7, 2023, issue of the *Texas Register* (48 TexReg 3615), and thus will not be republished. The Board will adopt a new §80.5 (Peer Review Process) in a separate rulemaking. This rulemaking action will clarify language relating to the Board's authority to conduct standard of care reviews during complaint investigations.

The Board received no comments from the public concerning the repeal.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic, and Texas Occupations Code and §201.210, which authorizes the Board to adopt rules to develop a review process for complaints requiring additional chiropractic expertise.

No other statutes or rules are affected by this repeal.

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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Christopher Burnett

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Texas Board of Chiropractic Examiners

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For further information, please call: (512) 305-6700



#### **22 TAC §80.5**

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §80.5 (Peer Review Process) without changes to the text as published in the July 7, 2023, issue of the *Texas Register* (48 TexReg 3616), and thus will not be republished. The current §80.5 is being repealed in a separate rulemaking.

Texas Occupations Code §201.210 requires the Board to set up a system where the Board may draw on outside chiropractic expertise (an "expert" reviewer of patient records) to help in investigations involving standard of care allegations. The Board adopted such a system through §80.5.

However, the use of the term "expert" in both the statute and the Board's current rule has caused confusion for some complainants as to the exact role and authority of the reviewer. Some complainants have thought that the reviewer's job is to assign legal liability for any injury the complainant may have suffered as the result of a licensee's failure to meet the profession's standard of care; in effect, some complainants believe that the reviewer

is the same as an expert witness in a trial court who is called upon to render an opinion as to causation (and thus assign legal liability). That is not the case with the Board's reviewers.

Unlike an expert witness, a Board reviewer does not examine any patient; the reviewer only performs a review of records. Also, a Board reviewer is not statutorily authorized to render an opinion as to causation, only whether the standard of care for chiropractic was met; those are different standards. An opinion on causation is within the purview of the courts, not the Board.

The adopted §80.5 keeps the Board's current system of outside standard of care review, but clarifies to both reviewers hired by the Board and complainants that the reviewer is not authorized to make a legal opinion as to any violation of statutes or rules under the Board's jurisdiction, nor authorized to make a legal opinion as to the liability for any injury possibly sustained by the complainant. To that end, the rule has been retitled as "Peer Review Process" to eliminate the perception that a Board reviewer is the same as an expert witness.

The Board received no comments regarding the new rule.

The rule is adopted under Texas Occupations Code §201.152 (which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic), and §201.210 (which requires the Board to develop a review process of complaints filed with the Board that require additional chiropractic expertise).

No other statutes or rules are affected by this adopted rule.

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) 305-6700



## 22 TAC §80.8

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §80.8 (Board Member and Staff Initiated Complaints) without changes to the text as published in the July 7, 2023, issue of the *Texas Register* (48 TexReg 3618), and thus will not be republished. This action puts into rule the Board's current policy for processing complaints initiated by Board members and staff.

As practicing chiropractors, Board members interact with other licensees. On occasion, a Board (or staff) member may become aware of facts that indicate that another licensee may be in violation of the statutes and rules under the Board's jurisdiction and thus need to file a formal complaint. The adopted rule formalizes the Board's procedures for processing those complaints.

The intent is transparency: the licensee who is the subject of a complaint under this rule will know the identity of the Board or staff member making the complaint; know that the allegations were considered independently by the Board's executive director before the complaint is forwarded to the Board's enforcement

director; and know that any Board member filing a complaint will be prohibited from voting on or considering the results of any investigation or subsequent administrative action taken by the Board on the complaint.

The Board received no comments regarding this rulemaking.

The rule is adopted under Texas Occupations Code §201.152 (which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic), §201.2205 (which requires the Board to adopt rules concerning the investigation of a complaint), and §201.2065 (which prohibits the Board from accepting anonymous complaints).

No other statutes or rules are affected by this adopted rule.

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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Christopher Burnett

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Texas Board of Chiropractic Examiners

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For further information, please call: (512) 305-6700



## CHAPTER 82. INTERNAL BOARD PROCEDURES

### 22 TAC §82.7

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §82.7 (Employee Equity Salary Adjustments) without changes to the text as published in the July 7, 2023, issue of the *Texas Register* (48 TexReg 3619), and thus will not be republished. The General Appropriations Act (GAA) authorizes an agency executive director to make employee equity salary adjustments only if the agency has adopted a rule permitting that action. The adopted rule, which is compliant with the terms of the GAA (Article IX, §3.07, 87th Legislature - Regular Session, 2021 (or successor provisions)), permits the agency executive director to make such adjustments if necessary.

The Board received no comments regarding this rule.

The rule is adopted under Texas Occupations Code §201.152 (which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic) and the General Appropriations Act, Article IX, §3.07 (87th Legislature - Regular Session, 2021) or successor provisions (which authorizes the Board to adopt rules concerning employee equity salary adjustments).

No other statutes or rules are affected by this adopted rule.

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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Christopher Burnett  
General Counsel  
Texas Board of Chiropractic Examiners  
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For further information, please call: (512) 305-6700



## PART 14. TEXAS OPTOMETRY BOARD

### CHAPTER 271. EXAMINATIONS

#### 22 TAC §§271.2, 271.3, 271.5, 271.6

The Texas Optometry Board (Board) adopts amendments to 22 TAC Chapter 271, Examinations. The specific rules being amended include: §271.2 Applications; §271.3 Jurisprudence Examination Administration; §271.5 Licensure without Examination; and §271.6 National Board Examination. The Board adopts these rules without changes to the proposed text as published in the May 26, 2023, issue of the *Texas Register* (48 TexReg 2651). The amended rules will not be republished.

#### BACKGROUND AND JUSTIFICATION

The rules in Chapter 271 were reviewed by the Board's Administration and Licensing Committee in January 2023 to ensure the licensing and renewal process was efficient and effective. By updating rules relating to licensing, the Board can provide better customer service to its licensees.

The adopted amendments include non-substantive changes to all references from "board" to "Board" and from "executive director" to "Executive Director." Substantive changes to specific rules are outlined as follows.

In §271.2 Applications, the Board amends the title of the rule to read "Applications for Licensure as Therapeutic Optometrist"; updates the documents required for licensure; updates the statutory reference to Texas Occupations Code Chapter 53 as it relates to convictions that must be reported upon application; states that applications must be approved within one year of application submission or applicants will have to reapply; sets out requirements for applicants who are licensed in other states; and removes language related to scheduling the jurisprudence exam as the Board will allow an applicant to take the exam at any point.

In §271.3 Jurisprudence Examination Administration, the amends the title of the rule to read "Jurisprudence Examination"; clarifies the jurisprudence exam is an "open book" exam; removes language related to scheduling the jurisprudence exam as the Board will allow an applicant to take the exam at any point; states that jurisprudence exam scores are only valid for one year and if an applicant fails to get licensed in that year, applicants will have to retake the exam; and removes language related to the administration of the exam as the Board has outsourced the exam administration to another entity.

In §271.5 Licensure without Examination, the Board clarifies that the rule only applies to those applicants who have not taken Part III of the National Board of Examiners in Optometry and makes other non-substantive grammatical changes and references to statute.

In §271.6 National Board Examination, the Board removes language regarding the jurisprudence exam as it is referenced in

a separate rule; and makes other non-substantive grammatical changes and references to statute.

#### COMMENTS:

The 30-day comment period ended on June 25, 2023. The Board did not receive any comments.

#### STATUTORY AUTHORITY

These rules are adopted under the Texas Optometry Act, Texas Occupations Code, §351.151 and Texas Occupations Code Chapter 351, Subchapter F - License Requirements.

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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Janice McCoy

Executive Director

Texas Optometry Board

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For further information, please call: (512) 305-8500



### CHAPTER 273. GENERAL RULES

#### 22 TAC §§273.7, 273.8, 273.12, 273.14, 273.15

The Texas Optometry Board (Board) adopts amendments to 22 TAC Chapter 273, General Rules. The specific rules being amended include: §273.7 - Inactive Licenses and Retired License for Volunteer Charity Care (to include splitting one rule into two separate rules for clarification purposes), §273.8 - Renewal of License, §273.12 - Profile Information, and §273.14 - License Applications for Military Service Member, Military Veteran, and Military Spouse. The Board adopts a new rule titled §273.15 - Retired License for Volunteer Charity Care. The Board adopts these rules with changes to the proposed text as published in the June 2, 2023, issue of the *Texas Register* (48 TexReg 2813). The amended rules will be republished.

#### BACKGROUND AND JUSTIFICATION

The rules in Chapter 273 were reviewed by the Board's Administration and Licensing Committee in January 2023 to ensure the licensing and renewal process was efficient and effective. By updating rules relating to licensing, the Board can provide better customer service to its licensees.

The adopted amendments include non-substantive changes to all references from "board" to "Board" and from "executive director" to "Executive Director." Substantive changes to specific rules are outlined as follows.

In §273.7 - Inactive Licenses and Retired License for Volunteer Charity Care, the Board split the rule into two separate rules - one related to Inactive Licenses and one related to Retired License for Volunteer Charity Care. Splitting the rule provides ease of understanding the differences between inactive and retired licenses. In the new §273.7 - Inactive Licenses, the rule eliminates the ability to place a license on inactive status at any time and instead allows it only at renewal.

In the new §273.15 - Retired License for Volunteer Charity Care, the rule moves language previously outlined in §273.7 and also

ensures only therapeutic optometrists can update an expired license to a retired license.

In §273.8 - Renewal of License, the Board updates the process to reflect the full transition to the biennial renewal system, clarifies the process for expired licenses to be reinstated under certain circumstances. It ensures the Board's consideration of convictions are in compliance with Chapter 53 of the Occupations Code, and makes other clarifying corrections to ensure the renewal process is both efficient and effective for licensees and Board staff.

In §273.12 - Profile Information, the Board removes the requirement that licensees provide certain information to the Board upon renewal as the Board no longer collects and disseminates this information. It adds the requirement that a licensee provide a personal email address at renewal.

In §273.14 - License Applications for Military Service Member, Military Veteran, and Military Spouse, the Board updates the definition of "Armed Forces of the United States" to update statutory language, to update the application requirements to ensure military applicants provide the same information as a regular applicant, and changes the initial expiration date of a military license to be the same as a regular applicant. Finally, with the changes to the jurisprudence exam occurring in Chapter 271 - Examination, the Board is requiring military applicants to take the jurisprudence exam prior to licensure instead of prior to the first renewal as waiting to take the jurisprudence exam no longer creates a barrier to expedited licensure.

#### COMMENTS

The 30-day comment period ended on July 3, 2023. The Board did not receive any comments.

#### CHANGES TO TEXT AS PROPOSED

In §273.14(e), the Board adds the term "military service member" or "service member's" in front of every mention of "military spouse" or "spouse's." This change is a direct result of legislation that passed during the 88th Legislative Session (SB422 by Senator Angela Paxton) that extended the authority of the Board to issue a license under Texas Occupations Code §55.0041 from just military spouses to include military service members.

Section (e) now reads: "(e) Alternate licensing procedure for military service member or military spouse..."

Section (e)(1)(A) now reads: "(A) The military service member or military spouse applicant..."

Section (e)(1)(B) now reads: "The military service member or military spouse..."

Section (e)(1)(B)(i) now reads: "proof of the service member's or spouse's..."

Section (e)(2)(A)(ii) now reads: "the date when the military service member or military spouse..."

#### STATUTORY AUTHORITY

These rules are adopted under the Texas Optometry Act, Texas Occupations Code, §351.151, Texas Occupations Code Chapter 351, Subchapter F - License Requirements and Subchapter G - License Renewal, and Texas Occupations Code Chapter 55.

#### §273.7. *Inactive Licenses.*

(a) Placing a license on inactive status. A person who is licensed by the Board to practice optometry but who is not engaged in

the practice of optometry in this state may place the license on inactive status at the time of license renewal as follows. The licensee shall:

(1) complete and submit before the expiration date a license renewal application provided by the Board;

(2) state on the renewal application that the license is to be placed on inactive status and that the licensee shall not practice optometry in Texas while the license is inactive; and

(3) pay the fee for renewal of license as specified in §273.4 of this title (relating to Fees (Not Refundable)). Penalty fees as provided by Section 351.304 of the Act, will apply to those received after December 31 of the applicable renewal period.

(b) Reactivation of an Inactive License. A holder of a license that is on inactive status may return the license to active status by:

(1) applying for active status on a form prescribed by the Board;

(2) providing proof of completion certificates from approved continuing education programs as specified in Chapter 275 of this title (relating to Continuing Education Requirements) for the number of hours that would otherwise have been required for the renewal of the license. Approved continuing education earned within the two years prior to the licensee applying for the return to active status may be applied toward the continuing education requirement; and

(3) paying the license renewal fee specified in §273.4 of this chapter (relating to Fees (Not Refundable)).

(c) Prohibition against practicing optometry in Texas. A holder of a license that is on inactive status shall not practice optometry in this state. The practice of optometry by a holder of a license that is on inactive status constitutes the practice of optometry without a license.

#### §273.8. *Renewal of License.*

(a) Expired license.

(1) If a license is not renewed on or before the expiration date, it becomes expired. All licenses renew on a biennial basis. Initial licenses expire on the second January 1 after the date the license is first issued.

(2) If a person's license has been expired for 90 days or less, the person may renew the license by paying to the Board the amount of one and one-half times the renewal fee.

(3) If a person's license has been expired for longer than 90 days but less than one year, the person may renew the license by paying to the Board the amount of two times the renewal fee.

(4) If a person's license has been expired for one year or longer, the person may not renew the license but may obtain a new license by reapplying and passing the jurisprudence exam and complying with the requirements and procedures for obtaining an initial license. However, the Board may reinstate a license without requiring reapplication and reexamination of the jurisprudence examination an expired license of a person who was previously licensed in Texas, is currently licensed in another state, and has been in practice for two years immediately preceding application for reinstatement. The person shall be required to furnish documentation of continuous practice for the two-year period and pay the renewal fee as established by subsection (a)(3) of this section. The person must furnish license verifications from each state in which the person is currently or previously licensed. A license renewal under this section is subject to the same requirements of §351.501 of the Act as a license applicant.



(5) For licenses expired for more than one year, if the person was not licensed as a therapeutic optometrist when the license expired, the person must also complete the requirements for therapeutic license in §§280.1 - 280.3 of this title (relating to Application for Certification Required; Education; Certified Therapeutic Optometrist Examination, respectively) prior to obtaining a new license.

(6) A licensee receiving a felony or misdemeanor criminal conviction as outlined under Occupations Code Chapter 53 shall report the conviction on the next license renewal. This requirement is in addition to the 30 day reporting requirement in §277.5 of this title (relating to Convictions). This paragraph does not require the reporting of a Class C Misdemeanor traffic violation. The failure of a licensee to report a criminal conviction is deceit, dishonesty and misrepresentation in the practice of optometry and authorizes the Board to take disciplinary action under §351.501 of the Act. The licensee shall furnish any document relating to the criminal conviction as requested by the Board.

(7) Only an active licensee who has provided a complete fingerprint criminal history report to the Board is eligible to renew a license.

(b) Mandatory Continuing Education for Renewal of License.

(1) The Board may not issue a renewal license to a licensee who has not complied with the mandatory continuing education requirements unless an exemption provided by §275.1 of this title (relating to General Requirements) is applicable.

(2) If a licensee has not fulfilled the required continuing education requirements prior to the license renewal date, the license shall expire. To renew that expired license, the licensee may obtain and provide the Board with certified records that the licensee has, since the expiration of the license, completed sufficient hours of approved continuing education courses to satisfy any deficiency. Education obtained for renewal of an expired license cannot be applied toward subsequent renewal of license.

(3) The licensee cannot practice optometry until such time as education is obtained and the expired license has been renewed.

(4) The licensee must pay to the Board the license renewal fee with a late penalty fee authorized by §351.304 of the Act, plus a penalty authorized by §351.308 of the Act.

(5) The Executive Director shall determine if all requirements for renewal of license have been fulfilled, and will notify the licensee when the practice of optometry can resume.

(6) To practice optometry with an expired license shall constitute the practice of optometry without a license.

(c) Outstanding Administrative Penalty or Failure to Comply with Board Condition.

(1) The Board may refuse to renew a license to a person who has:

(A) not paid an administrative penalty owed to the Board at the time of renewal; or

(B) not complied with a term or condition of a disciplinary order or agreement issued by the Board.

(2) The Board may refuse to renew a license, until such time as:

(A) every administrative penalty payable on or before the time of renewal is paid; or

(B) all terms or conditions of a disciplinary order or agreement issued by the Board are satisfied.

§273.12. Profile Information.

(a) All licensees shall provide, on each application for renewal of license, the information listed in subsection (b). New licensees shall provide the information listed in subsection (b) prior to receiving a license.

(b) Each license holder is required to furnish:

(1) the name of the license holder and the address and telephone number of the license holder's primary practice location; and

(2) a personal email address.

§273.14. License Applications for Military Service Member, Military Veteran, and Military Spouse.

(a) Definitions.

(1) "Military service member" means a person who is on active duty.

(2) "Military spouse" means a person who is married to a military service member.

(3) "Military veteran" means a person who has served on active duty, who was discharged or released from active duty, and who was not dishonorably discharged.

(4) "Active duty" means current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, as defined by §437.001, Government Code, or similar military service of another state.

(5) "Armed forces of the United States" means the army, navy, air force, space force, coast guard, or marine corps of the United States or a reserve unit of one of those branches of the armed forces.

(b) License eligibility requirements for applicants with military experience.

(1) Verified military service, training, or education will be credited toward the licensing requirements, other than an examination requirement, of an applicant who is a military service member or military veteran.

(2) This subsection does not apply if the applicant holds a restricted license issued by another jurisdiction or has an unacceptable criminal history.

(c) Alternate licensing procedure authorized by Texas Occupations Code §55.004 and §55.005.

(1) Applicants currently licensed in another state.

(A) Application.

(i) The military service member, military veteran or military spouse applicant must be licensed in good standing as a therapeutic optometrist or the equivalent in another state, the District of Columbia, or a territory of the United States that has licensing requirements that are substantially equivalent to the requirements of the Act.

(ii) The military service member, military veteran or military spouse applicant shall submit a completed Military application, including the submission of proof of the applicant's status as a military service member, military veteran or military spouse along with all documents required under §271.2 of this title.

(iii) A military service member, military veteran, or military spouse licensed in another state is exempt from the application fee in §273.4 of this chapter (relating to Fees (Not Refundable)). Such an applicant is not exempt from exam administration fees charged

for an exam administered by an organization or person other than the Board.

(iv) A license issued under this subsection shall be a license to practice therapeutic optometry with the same obligations and duties required of a licensed therapeutic optometrist and subject to the same disciplinary requirements for that license.

(B) License Renewal.

(i) Initial military licenses expire on the second January 1 after the date the license is first issued. If the initial license is timely renewed, the licensee may thereafter renew the license by paying the renewal fee prior to the expiration date set in §273.8 of this chapter.

(ii) The requirements for renewing the license are the same as the requirements for renewing an active license.

(2) Requirements for license for military requirements for renewing an active service member, military veteran or military spouse applicant not currently licensed to practice optometry who was licensed in Texas within five years of the application submission.

(A) Application.

(i) The military service member, military veteran or military spouse applicant shall submit a completed Military application, including the submission of proof of the applicant's status as a military service member, military veteran or military spouse along with all documents required under §271.2 of this title.

(ii) An application fee in the same amount as the application fee set out in §273.4 of this chapter must be submitted with the application.

(iii) A license issued under this subsection shall be a license to practice therapeutic optometry with the same obligations and duties required of a licensed therapeutic optometrist and subject to the same disciplinary requirements for that license.

(B) License Renewal.

(i) Initial military licenses expire on the second January 1 after the date the license is first issued. If the initial license is timely renewed, the licensee may thereafter renew the license by paying the renewal fee prior to the expiration date set in §273.8 of this chapter.

(ii) The requirements for renewing the license are the same as the requirements for renewing an active license.

(d) Alternative method to demonstrate competency. To protect the health and safety of the citizens of this state, a license to practice optometry requires the licensee to obtain a doctorate degree in optometry and passing scores on lengthy and complex nationally accepted examinations. An alternative method to demonstrate competency is not available at this time.

(e) Alternate licensing procedure for military service member or military spouse authorized by Texas Occupations Code §55.0041.

(1) Application.

(A) The military service member or military spouse applicant must be licensed in good standing as a therapeutic optometrist or the equivalent in another state, the District of Columbia, or a territory of the United States that has licensing requirements that are substantially equivalent to the requirements of the Act. For purposes of this subsection, the Board finds that every state and territory that issues a therapeutic license to a graduate of an accredited optometry school has

licensing requirements that are substantially equivalent to the requirements of the Act.

(B) The military service member or military spouse applicant shall submit:

(i) proof of the service member's or spouse's residency in this state and a copy of the service member's or spouse's military identification card;

(ii) a completed Federal Bureau of Investigation fingerprint card provided by the Board;

(iii) an official license verification from the state in which the applicant is licensed that has licensing requirements substantially equivalent to the Act; and

(iv) application form.

(2) License.

(A) A license issued under this subsection:

(i) shall be a license to practice therapeutic optometry with the same obligations and duties required of a licensed therapeutic optometrist and subject to the same disciplinary requirements for that license,

(ii) will expire three years after the license is issued, or if occurring prior to the expiration of the three-year period, the date when the military service member or military spouse is no longer stationed at a military installation in this state, and

(iii) may not be renewed.

(B) The application and license is exempt from the Texas Jurisprudence Examination and the application fee and initial license fee in §273.4 of this chapter.

§273.15. *Retired License for Volunteer Charity Care.*

(a) Retired License. The Board may issue a Retired License to optometrists or therapeutic optometrists whose only practice is volunteer charity care pursuant to this section.

(b) Application. An optometrist holding a current license may apply for a Retired License by submitting to the Board a completed application with the license fee required by §273.4 of this chapter (relating to Fees (Not Refundable)). There is no charge to apply. A Retired License will not be issued to applicants subject to current or pending disciplinary action. In determining whether to grant retired status, the board shall consider the age, years of practice, and status of the license holder at the time of the application. Applicants must supply proof that the continuing education requirements for a Retired License have been met in §275.1(g)(1) of this title (relating to General Requirements).

(c) Application by Expired Licensee. A former therapeutic optometrist whose license has expired for one year or more may apply for a Retired License by submitting to the Board a completed application with the license fee required by §273.4 of this chapter. There is no charge to apply. A Retired License will not be issued to applicants subject to current or pending disciplinary action. Applicants must supply proof of having met the continuing education requirements of §275.1(g)(2) of this title. An applicant for a Retired License whose license has been expired for five years or more must supply proof of a passing score on the jurisprudence examination taken within the one year period prior to the submission of the application. In determining whether to grant retired status, the Board shall consider the age, years of practice, and status of the license holder at the time of the application.

(d) Scope of License. The holder of a Retired License may practice optometry or therapeutic optometry in the same manner as an

active licensee of the Board, subject to the restrictions contained in this section. A holder of a Retired License may only practice optometry or therapeutic optometry when such practice is without compensation or expectation of compensation (except for the reimbursement of travel and supply expenses) as a direct service volunteer of a charitable organization.

(e) Charitable Organization. A charitable organization includes any bona fide charitable, religious, prevention of cruelty to children or animals, youth sports and youth recreational, neighborhood crime prevention or patrol, or educational organization (excluding fraternities, sororities, and secret societies), or other organization organized and operated exclusively for the promotion of social welfare by being primarily engaged in promoting the common good and general welfare of the people in a community, including these types of organizations with a §501(c)(3) or (4) exemption from federal income tax, some chambers of commerce, and volunteer centers certified by the Department of Public Safety.

(f) Renewal. A Retired License expires on the same date as a regular license. Prior to renewing the license, the licensee must supply proof that the continuing education requirements for a Retired License have been met. The license renewal fee is set in §273.4 of this chapter.

(g) Penalty. The holder of a Retired License shall not receive compensation for the practice of optometry. To do so constitutes the practice of optometry without a license and subjects the optometrist or therapeutic optometrist to the penalties imposed for this violation.

(h) Reinstatement of an Active License by a Holder of a Retired License. Retired licensees may apply for reinstatement by submitting to the Board a completed application with the application fee required by §273.4 of this chapter. Applicants must supply proof that the continuing education requirements for an active license have been met.

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

Filed with the Office of the Secretary of State on August 7, 2023.

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Janice McCoy  
Executive Director  
Texas Optometry Board  
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For further information, please call: (512) 305-8500



## PART 15. TEXAS STATE BOARD OF PHARMACY

### CHAPTER 283. LICENSING REQUIREMENTS FOR PHARMACISTS

#### 22 TAC §283.4

The Texas State Board of Pharmacy adopts amendments to §283.4, concerning Internship Requirements. These amendments are adopted without changes to the proposed text as published in the June 16, 2023, issue of the *Texas Register* (48 TexReg 3033). The rule will not be republished.

The amendments extend the period that internship hours may be used for licensure from two years to three years from the date the internship is completed.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

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Julie Spier, R.Ph.  
President  
Texas State Board of Pharmacy  
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For further information, please call: (512) 305-8026



#### 22 TAC §283.6

The Texas State Board of Pharmacy adopts amendments to §283.6, concerning Preceptor Requirements and Ratio of Preceptors to Pharmacist-Interns. These amendments are adopted without changes to the proposed text as published in the June 16, 2023, issue of the *Texas Register* (48 TexReg 3035). The rule will not be republished.

The amendments remove the condition that a pharmacist preceptor must have six months of residency training if the pharmacist-intern's residency program is accredited by the American Society of Health System Pharmacists.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

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## CHAPTER 291. PHARMACIES SUBCHAPTER A. ALL CLASSES OF PHARMACIES

### 22 TAC §291.24

The Texas State Board of Pharmacy adopts the repeal of §291.24, concerning Pharmacy Residency Programs. The repeal is adopted without changes to the proposed repeal as published in the June 16, 2023, issue of the *Texas Register* (48 TexReg 3038). The rule will not be republished.

The repeal of §291.24 removes standards for a statutory program that no longer exists.

No comments were received.

#### STATUTORY AUTHORITY

The repeal is adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the adopted repeal: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

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### 22 TAC §291.27

The Texas State Board of Pharmacy adopts amendments to §291.27, concerning Confidentiality. These amendments are adopted without changes to the proposed text as published in the June 16, 2023, issue of the *Texas Register* (48 TexReg 3039). The rule will not be republished.

The amendments correct a misspelled word.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing

the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

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## SUBCHAPTER G. SERVICES PROVIDED BY PHARMACIES

### 22 TAC §291.121

The Texas State Board of Pharmacy adopts amendments to §291.121, concerning Remote Pharmacy Services. These amendments are adopted without changes to the proposed text as published in the June 16, 2023, issue of the *Texas Register* (48 TexReg 3040). The rule will not be republished.

The amendments allow remote pharmacy services to be provided using an automated pharmacy system to be provided at healthcare facilities regulated under Chapter 534, Health and Safety Code.

The Board received comments from Angela Babin, BSP Pharm, MBA, with The Harris Center, in support of the amendments.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

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## SUBCHAPTER H. OTHER CLASSES OF PHARMACY

### 22 TAC §291.151

The Texas State Board of Pharmacy adopts amendments to §291.151, concerning Freestanding Emergency Medical Care Facility (Class F). These amendments are adopted without changes to the proposed text as published in the June 16, 2023, issue of the *Texas Register* (48 TexReg 3051). The rule will not be republished.

The amendments clarify that a pharmacist must verify the completeness and reconciliation of the perpetual inventory of controlled substances for an FEMCF pharmacy.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

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Julie Spier, R.Ph.

President

Texas State Board of Pharmacy

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## PART 23. TEXAS REAL ESTATE COMMISSION

### CHAPTER 535. GENERAL PROVISIONS

#### SUBCHAPTER D. THE COMMISSION

### 22 TAC §535.46

The Texas Real Estate Commission (TREC) adopts new 22 TAC §535.46, Broker Responsibility Advisory Committee, in Chapter 535, General Provisions, without changes, as published in the June 9, 2023, issue of the *Texas Register* (48 TexReg 2925) and will not be republished.

The new rule establishes an advisory committee called the Broker Responsibility Advisory Committee (BRAC), which is tasked with advising TREC as to issues surrounding broker responsibility within the real estate industry. This committee will also make recommendations to TREC regarding possible legislative and rule changes associated with broker responsibility issues impacting both the real estate industry and the consumer.

Nine comments were received. Two comments were unrelated to the proposed new rule. Five comments were in favor of the new rule and the creation of BRAC. Some commenters noted the importance of a diverse group of members that represent all brokers. One commenter believed the new committee should also include sales agents, which the Executive Committee did not think necessary in light of the BRAC's stated objective of examining broker responsibility. Another commenter asked what criteria would be used to select members and whether the position would be paid. The Executive Committee noted the criteria for membership is listed in the rule and that considerations related to geographic region would be made by the selection committee. The Executive Committee also noted that a committee member would not be paid for serving. After reviewing the comments, the Executive Committee declined to recommend any changes to the rule as published.

The new rule is adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by this adoption is Texas Occupations Code, Chapter 1101, specifically section 1101.158. No other statute, code or article is affected by the new rule.

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

Filed with the Office of the Secretary of State on August 9, 2023.

TRD-202302890

Vanessa E. Burgess

General Counsel

Texas Real Estate Commission

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Proposal publication date: June 9, 2023

For further information, please call: (512) 936-3284



## SUBCHAPTER I. LICENSE RENEWAL

### 22 TAC §535.92

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.92, Continuing Education Requirements, in Chapter 535, General Provisions, without changes, as published in the June 9, 2023, issue of the *Texas Register* (48 TexReg 2926) and will not be republished.

The amendments to §535.92 include expand a real estate license holder's opportunity to earn up to four hours of continuing education elective credit for attendance at a single Commission meeting and clarify that such credit may only be awarded for attendance at one Commission meeting per renewal cycle. The remainder of the changes are either updates to terminology or form for consistency throughout the chapter or are made to reflect updated processes.

Thirteen comments were received. One comment asked for clarification regarding credit for meetings attended remotely, which the Executive Committee noted the rule language specifically prohibits. Another commenter supported the change but made other suggestions related to course work for license holders.

One commenter requested clarification regarding the number of hours that can be earned, which the Executive Committee also noted was detailed in the rule language itself. One commenter misunderstood that this rule change does not increase the number of continuing education hours a license holder must take. Some commenters expressed concern that continuing education should be classroom based only. Other commenters thought the change to allow license holders more opportunity to obtain continuing education credit was very beneficial because Commission meetings are very informative. After reviewing the comments, the Executive Committee declined to recommend any changes to the rule as published.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by this adoption is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the adopted amendments.

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

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TRD-202302889

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Texas Real Estate Commission

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For further information, please call: (512) 936-3284



## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 15. TEXAS VETERANS COMMISSION

#### CHAPTER 450. VETERANS COUNTY SERVICE OFFICERS CERTIFICATE OF TRAINING

##### 40 TAC §450.1, §450.3

The Texas Veterans Commission (Commission) adopts amendments to Chapter 450, §450.1 and §450.3, of Title 40, Part 15, Chapter 450 of the Texas Administrative Code concerning Veterans County Service Officers Certificate of Training without changes to the proposed text as published in the May 26, 2023, issue of the *Texas Register* (48 TexReg 2688) and will not be republished.

The amended rules are adopted to change the definitions in existing language to reflect the language in Title 38 of the Code of Federal Regulations (CFR) and to correct grammatical errors.

No comments were received regarding the proposed rule amendments.

The amended rules are adopted under Texas Government Code §434.010, which authorizes the Commission to establish rules it considers necessary for its administration, and Texas Government Code §434.038, which authorizes the Commission to establish rules governing the training and certification for Veteran County Service Officers and Assistant Veterans County Service Officers.

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

Filed with the Office of the Secretary of State on August 11, 2023.

TRD-202302954

Kathleen Cordova  
General Counsel

Texas Veterans Commission

Effective date: August 31, 2023

Proposal publication date: May 26, 2023

For further information, please call: (737) 320-4167



## CHAPTER 451. VETERANS COUNTY SERVICE OFFICERS ACCREDITATION

### 40 TAC §451.1, §451.3

The Texas Veterans Commission (Commission) adopts amendments to Chapter 451, §451.1 and §451.3, Veterans County Service Officers Accreditation with nonsubstantive changes to the proposed text as published in the May 26, 2023, issue of the *Texas Register* (48 TexReg 2689) and will be republished.

The amended rules are adopted to change existing language to be consistent with the terms found in Title 38 of the Code of Federal Regulations (CFR).

No comments were received regarding the proposed rule amendments.

The amended rules are adopted under Texas Government Code §434.010, which authorizes the Commission to establish rules it considers necessary for its administration, and Texas Government Code §434.039, which authorizes the Commission to develop a plan for encouraging service officers to become accredited by the United States Department of Veterans Affairs.

#### §451.1. Definitions.

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

(1) Accreditation--Recognition by the United States Department of Veterans Affairs (VA) of representatives, attorneys, and agents to represent claimants.

(2) Accredited representative of the Texas Veterans Commission--A representative of the Texas Veterans Commission approved by the secretary for the preparation, presentation, and prosecution of claims under laws administered by the secretary.

(3) Certificate of training--Documentation that an officer has met the requirements of §450.3 of this title (relating to General Provisions).

(4) Commission--The Texas Veterans Commission which is a "Recognized Veterans Service Organization" by the United States Department of Veterans Affairs.

(5) Credit hour--Unit of measuring credit earned for attending a classroom or virtual training courses provided by the commission or other commission approved training.

(6) Initial training--Introductory training completed by newly appointed officers as defined in Chapter 450 of this title (relating to Certificate of Training).

(7) Officer--Veterans County Service Officer or assistant veterans county service officer appointed by a county commissioners court.

(8) Recognized Veterans Service Organization--An organization accredited by the United States Department of Veterans Affairs to represent claimants.

(9) Recommendation-- the procedure by which the commission indicates to the secretary that it desires an officer to become an accredited representative of the Texas Veterans Commission and certifies that the officer meets the requirements of 38 C.F.R. § 14.629(a).

(10) Representative--Person who has been recommended by a Recognized Veterans Service Organization and accredited by the United States Department of Veterans Affairs.

(11) Secretary--The secretary of the United States Department of Veterans Affairs.

(12) Training event -- Training or testing conducted by the commission.

*§451.3. General Provisions.*

(a) The commission shall provide all officers information concerning accreditation when the commission receives information is received indicating notice that an officer has been appointed by a county commissioners court.

(b) Officers must meet the following minimum standards as set forth in 38 Code of Federal Regulations §14.629 for recommendation:

(1) is a paid employee of the county working for it not less than 1,000 hours annually;

(2) has successfully completed a course of training and an examination which have been approved by the appropriate VA district counsel within the state; and

(3) will receive annual training to ensure continued qualification as a representative in the claims' process.

(c) To receive recommendation, the officer must hold a current certificate of training from the commission under the provisions of §450.3 of this title (relating to General Provisions), have attained at least 24 credit hours after completion of initial training requirements, and pass a proficiency exam.

(d) All officers must submit a formal written application for recommendation to the commission, which shall review the application for eligibility and approval.

(e) Credit hours may be earned by attending training sponsored or conducted by organizations other than the commission in accordance with §450.3 of this title.

(f) The commission may pay for an officer's attendance to one commission conducted training event per fiscal year to meet the offi-

cer's annual training requirement. However, if an officer has met the 12 hours required annually, then the commission shall not pay for the officer to attend subsequent training events.

(g) Examinations for the initial recommendation and examinations to maintain recommendation will be administered by the commission at a location and time designated by the commission.

(h) Officers must agree to follow procedures promulgated by the commission.

(i) When all criteria have been met by the officer, the commission will request accreditation from the United States Department of Veterans Affairs via VA Form 21.

(j) To maintain the recommendation of the commission, an officer must successfully pass, at least annually, a proficiency exam and hold a current certificate of training under the provisions of §450.3 of this title.

(k) Inquiries concerning accreditation shall be directed to and answered by the commission Claims Department Director. Disputes shall be reviewed and a decision rendered by the commission Claims Department Director or designee. Disputes which remain unresolved shall be referred to the executive director of the commission or the executive director's designee. The decision of the executive director or the executive director's designee shall be final.

(l) The executive director of the commission or the executive director's designee will request that the secretary:

(1) revoke the accreditation of the officer upon termination of the officer;

(2) suspend or revoke the accreditation of an officer for the officer's failure to:

(A) maintain commission annual training requirements;  
(B) maintain the commission annual testing requirements;

(C) maintain the VA's annual training requirements; or

(D) maintain active use of the VA's database systems;  
and

(3) suspend or revoke the accreditation of the officer for any situation in which the action is deemed appropriate.

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

Filed with the Office of the Secretary of State on August 11, 2023.

TRD-202302955

Kathleen Cordova

General Counsel

Texas Veterans Commission

Effective date: August 31, 2023

Proposal publication date: May 26, 2023

For further information, please call: (737) 320-4167

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# REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which

invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

## Proposed Rule Reviews

Texas Department of Insurance, Division of Workers' Compensation

### Title 28, Part 2

The Texas Department of Insurance, Division of Workers' Compensation (DWC) will review all sections in 28 Texas Administrative Code:

- Chapter 102 (Practices and Procedures--General Provisions);
- Chapter 104 (General Provisions--Rule-Making);
- Chapter 109 (Workers' Compensation Coverage for State Employees);
- Chapter 110 (Required Notices of Coverage);
- Chapter 112 (Scope of Liability for Compensation);
- Chapter 114 (Self-Insurance); and
- Chapter 116 (General Provisions--Subsequent Injury Fund).

This review complies with the requirements for periodic rule review under Texas Government Code §2001.039.

DWC will consider whether the reasons for initially adopting these rules continue to exist, and whether these rules should be repealed, readopted, or readopted with amendments.

### Comments

To comment on this review, you must:

- Submit your written comments by 5:00 p.m., Central time, on October 3, 2023.
- Specify the rule to which your comment applies.
- Include any proposed alternative language.

Send your written comments or hearing request to RuleComments@tdi.texas.gov or to:

Legal Services, MC-LS

Texas Department of Insurance, Division of Workers' Compensation  
P.O. Box 12050

Austin, Texas 78711-2050

DWC may consider any suggested repeals or amendments identified during this rule review in future rulemaking under Texas Government Code Chapter 2001 (Administrative Procedure).

TRD-202302977

Kara Mace

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Filed: August 15, 2023



Texas Commission on Environmental Quality

### Title 30, Part 1

The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 Texas Administrative Code Chapter 111, Control of Air Pollution from Visible Emissions and Particulate Matter.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 111 continue to exist.

Comments regarding suggested changes to the rules in Chapter 111 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

### Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 111. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at <https://tceq.commentinput.com/>. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-077-111-AI. Comments must be received by September 26, 2023. For further information, please contact Elizabeth Sartain, Air Quality Division, at (512) 239-3933.

TRD-202302993

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: August 16, 2023



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 Texas Administrative Code Chap-

ter 214, Secondary Containment Requirements for Underground Storage Tank Systems Located Over Certain Aquifers.

This proposal is limited to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 214 continue to exist.

Comments regarding suggested changes to the rules in Chapter 214 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

#### Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 214. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://tceq.commentinput.com/>. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-091-214-CE. Comments must be received by September 26, 2023. For further information, please contact Zachary King, Program Support and Environmental Assistance Division, at (512) 239-1931.

TRD-202302991

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: August 16, 2023



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 Texas Administrative Code (TAC) Chapter 295, Water Rights, Procedural.

This proposal is limited to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in 30 TAC Chapter 295 continue to exist.

Comments regarding suggested changes to the rules in 30 TAC Chapter 295 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

#### Submittal of Comments

The commission invites public comment on this preliminary review of the rules in 30 TAC Chapter 295. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://tceq.commentinput.com/>. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-092-295-OW. Comments must be received by September 26, 2023. For further information, please contact Jade Rutledge, Water Availability Division, at (512) 239-4559.

TRD-202302992

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: August 16, 2023



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 Texas Administrative Code Chapter 309, Domestic Wastewater Effluent Limitation and Plant Siting.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 309 continue to exist.

Comments regarding suggested changes to the rules in Chapter 309 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

#### Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 309. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://tceq.commentinput.com/>. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-094-309-OW. Comments must be received by September 26, 2023. For further information, please contact Shannon Gibson, Water Quality Division, at (512) 239-4284.

TRD-202302994

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: August 16, 2023



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 Texas Administrative Code Chapter 350, Texas Risk Reduction Program.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 350 continue to exist.

Comments regarding suggested changes to the rules in Chapter 350 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

#### Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 350. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://tceq.commentinput.com/>. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All

comments should reference Non-Rule Project Number 2023-095-350-WS. Comments must be received by September 26, 2023. For further information, please contact Anna R. Brulloths, Remediation Division, at (512) 239-5052.

TRD-202302995  
Charmaine Backens  
Deputy Director, Environmental Law Division  
Texas Commission on Environmental Quality  
Filed: August 16, 2023



## Texas Juvenile Justice Department

### Title 37, Part 11

The Texas Juvenile Justice Department (TJJD) proposes the review of Title 37, Texas Administrative Code, Chapter 380, Subchapter A, Admission, Placement, Release, and Discharge, in accordance with §2001.039, Texas Government Code.

An assessment will be made by TJJD to determine whether the reasons for adopting or readopting the rules in the subchapter continue to exist and whether the rules reflect current legal and policy considerations and current TJJD procedure.

Comments on the review may be submitted within 30 days after publication of this notice to Texas Juvenile Justice Department, Central Services Building, Attention: Policy and Standards Section, 1711 San Jacinto Blvd, Austin, Texas 78701. Comments may also be sent via email to [policy.proposals@tjjd.texas.gov](mailto:policy.proposals@tjjd.texas.gov).

TRD-202302962  
Christian von Wupperfeld  
General Counsel  
Texas Juvenile Justice Department  
Filed: August 14, 2023



## Adopted Rule Reviews

### Credit Union Department

#### Title 7, Part 6

The Credit Union Commission (Commission) has completed its review of Chapter 91 Subchapter C (relating to Members); Subchapter P (relating to Other Forms of Equity Capital); and Subchapter Q (relating to Access to Confidential Information).

The rules were reviewed as a result of the Department's general rule review under Texas Government Code Section 2001.039.

Notice of the review of 7 TAC, Part 6, Chapter 91, Subchapters A, P and Q were published in the *Texas Register* as required on March 10, 2023, (48 TexReg 1453). The Department received no formal comment on the notice of intention to review.

The Department hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's legal authority to readopt.

TRD-202302960  
Michael S. Riepen  
Commissioner  
Credit Union Department  
Filed: August 14, 2023



## Texas Education Agency

### Title 19, Part 2

The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 53, Subchapter AA, Commissioner's Rules, pursuant to Texas Government Code, §2001.039. TEA proposed the review of 19 TAC Chapter 53 in the May 19, 2023 issue of the *Texas Register* (48 TexReg 2581).

Relating to the review of 19 TAC Chapter 53, Subchapter AA, TEA finds that the reasons for adopting the rules continue to exist and readopts the rules. TEA received no comments related to the review. In the future, TEA anticipates updating §53.1002 to reflect the most current application dates and methods and revising §53.1021 to reflect the current nature of education service center partnerships.

This concludes the review of 19 TAC Chapter 53.

TRD-202302929  
Cristina De La Fuente-Valadez  
Director, Rulemaking  
Texas Education Agency  
Filed: August 10, 2023



## Texas Veterans Commission

### Title 40, Part 15

The Texas Veterans Commission (Commission) has completed its review of 40 TAC Chapters 450, 451, 452, and 453.

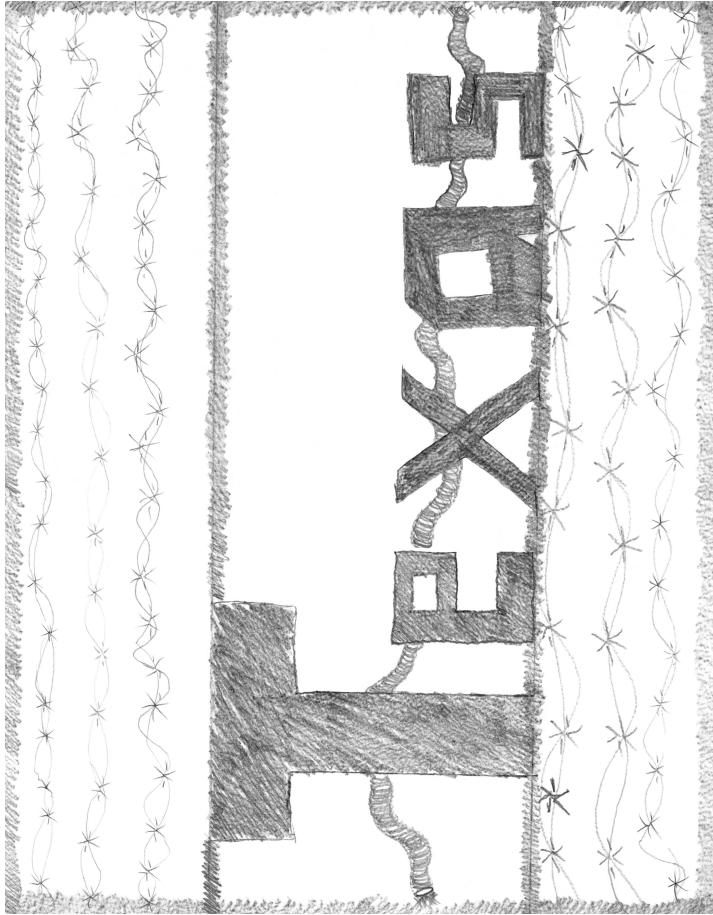
The notice of proposed rule review was published in the May 26, 2023, issue of the *Texas Register* (48 TexReg 2733). The Commission received no comments regarding the proposed rule review.

After completing the review of 40 TAC Chapter 450, concerning Veterans County Service Officers Certificate of Training; Chapter 451, concerning Veterans County Service Officers Accreditation; Chapter 452, concerning Administration General Provisions; and Chapter 453, concerning Historically Underutilized Business Program, the Commission determined that the reasons for initially adopting these rules continue to exist. The Commission, pursuant to Texas Government Code §2001.039, readopts these rules with no changes, except for §§450.1, 450.3, 451.1 and 451.3, which are readopted with amendments. As a result, the Commission proposes amendments to these rules, which can be found in the Adopted Rules section of this issue.

This notice concludes the Commission's review of the Texas Administrative Code, Title 40 Part 15 Chapters 450, 451, 452 and 453.

TRD-202302953  
Kathleen Cordova  
General Counsel  
Texas Veterans Commission  
Filed: August 11, 2023





# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Alamo Area Metropolitan Planning Organization

### RFP - On-Call Travel Demand Modeling Services

The Alamo Area Metropolitan Planning Organization (AAMPO) is seeking proposals from qualified firms to provide On-Call Travel Demand Modeling Services.

The Request for Proposals (RFP) may be obtained by downloading the RFP and attachments from AAMPO's website at [www.alamoareampo.org](http://www.alamoareampo.org) or calling Sonia Jiménez, Deputy Director, at (210) 668-3614. Anyone wishing to submit a proposal must email it by 12:00 p.m. (CDT), Friday, September 29, 2023 to the AAMPO office at [aampo@alamoareampo.org](mailto:aampo@alamoareampo.org).

Reimbursable funding for this study, in the amount of \$450,000, is contingent upon the availability of federal transportation planning funds.

TRD-202302979

Sonia Jimenez

Deputy Director

Alamo Area Metropolitan Planning Organization

Filed: August 15, 2023



### RFP - Regional Freight Study

The Alamo Area Metropolitan Planning Organization (AAMPO) is seeking proposals from qualified firms to conduct a Regional Freight Study.

The Request for Proposals (RFP) may be obtained by downloading the RFP and attachments from AAMPO's website at [www.alamoareampo.org](http://www.alamoareampo.org) or calling Clifton Hall, Transportation Planning Program Manager, at (210) 230-6929. Anyone wishing to submit a proposal must email it by 12:00 p.m. (CDT), Friday, September 29, 2023 to the AAMPO office at [aampo@alamoareampo.org](mailto:aampo@alamoareampo.org).

Reimbursable funding for this study, in the amount of \$350,000, is contingent upon the availability of federal transportation planning funds.

TRD-202302978

Sonia Jimenez

Deputy Director

Alamo Area Metropolitan Planning Organization

Filed: August 15, 2023



## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§ 303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/21/23 - 08/27/23 is 18% for consumer<sup>1</sup> credit.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/21/23 - 08/27/23 is 18% for commercial<sup>2</sup> credit.

The postjudgment interest rate as prescribed by §304.003 for the period of 09/01/23 - 09/30/23 is 8.50%.

<sup>1</sup> Credit for personal, family, or household use.

<sup>2</sup> Credit for business, commercial, investment, or other similar purpose.

TRD-202302990

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: August 16, 2023



## Credit Union Department

### Application for a Merger or Consolidation

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration.

An application was received from The Electric Utilities Credit Union (Big Spring) seeking approval to merge with ALLIANCE Credit Union (Lubbock), with the latter being the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-202303000

Michael S. Riepen

Commissioner

Credit Union Department

Filed: August 16, 2023



### Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final actions taken on the following application:

Field of Membership - Approved

First Service Credit Union (Houston) - See *Texas Register* dated on March 24, 2023.

TRD-202302996

Michael S. Riepen

Commissioner

Credit Union Department

Filed: August 16, 2023



### Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final actions taken on the following applications:

Merger or Consolidation - Approved

Chevron Federal Credit Union (California) and CTECU (Houston) - See *Texas Register* dated on December 30, 2022.

TRD-202302998

Michael S. Riepen

Commissioner

Credit Union Department

Filed: August 16, 2023



### Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final actions taken on the following applications:

Articles of Incorporation Change - Approved

American Baptist Association Credit Union (Angleton) - See *Texas Register* dated on June 30, 2023.

TRD-202302999

Michael S. Riepen

Commissioner

Credit Union Department

Filed: August 16, 2023



## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 26, 2023**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **September 26, 2023**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or

the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: C.V.W.S., Incorporated; DOCKET NUMBER: 2023-0403-PWS-E; IDENTIFIER: RN102691219; LOCATION: Uncertain, Harrison County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: \$1,750; ENFORCEMENT COORDINATOR: Christiana McCrimmon, (512) 239-2811; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: City of Bridge City; DOCKET NUMBER: 2021-1536-MLM-E; IDENTIFIER: RN101199966; LOCATION: Bridge City, Orange County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(l)(5), by failing to meet the conditions for an issued exception; 30 TAC §290.41(c)(3)(K), by failing to seal the wellhead by a gasket or sealing compound and provide a well casing vent for Well Number 4 that is covered with a 16-mesh or finer corrosion-resistant screen, facing downward, elevated and located so as to minimize the drawing of contaminants into the well; 30 TAC §290.42(b)(2)(C), by failing to ensure that all openings to the atmosphere are covered with a 16-mesh or finer corrosion-resistant screening material or an acceptable equivalent; 30 TAC §290.42(d)(2)(F), by failing to provide the air release devices with a 16-mesh or finer corrosion-resistant screening material so as to preclude the possibility of submergence or possible entrance of contaminants; 30 TAC §290.42(f)(1)(E)(ii)(I), by failing to provide adequate containment for all liquid chemical storage tanks; 30 TAC §290.42(f)(1)(E)(ii)(IV), by failing to provide separate containment structures for chemicals that are incompatible; 30 TAC §290.42(l), by failing to maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.42(m), by failing to provide an intruder-resistant fence around each water treatment plant and all related appurtenances that remains locked during periods of darkness and when the facility is unattended; 30 TAC §290.44(h)(4), by failing to have all backflow prevention assemblies tested upon installation and on an annual basis by a recognized backflow assembly tester and certified that they are operating within specifications; 30 TAC §290.45(b)(1)(D)(i) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a well capacity of 0.6 gallons per minute per connection; 30 TAC §290.45(b)(1)(D)(ii) and THSC, §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection; 30 TAC §290.46(f)(2) and (3)(C)(i), by failing to maintain water works operation and maintenance records and make them readily available for review by the Executive Director upon request; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.46(n)(2), by failing to make available an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; and 30 TAC §305.42(a) and TWC, §26.121(a)(1), by failing to obtain authorization to discharge municipal waste into or adjacent to any water in the state; PENALTY: \$41,741; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$33,394; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 881-6991; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: City of West Tawakoni; DOCKET NUMBER: 2023-0232-UTL-E; IDENTIFIER: RN101423671; LOCATION: West Tawakoni, Hunt County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw

water service that furnishes water service; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: \$530; ENFORCEMENT COORDINATOR: Mason DeMasi, (512) 239-2093; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: HARRIS COUNTY WCID 21; DOCKET NUMBER: 2023-0965-WQ-E; IDENTIFIER: RN102077807; LOCATION: Channelview, Harris County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit for stormwater discharges; PENALTY: \$875; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: HPA Texas Sub 2016 ML LLC; DOCKET NUMBER: 2022-0964-OSS-E; IDENTIFIER: RN111135547; LOCATION: Midlothian, Ellis County; TYPE OF FACILITY: rental property; RULES VIOLATED: 30 TAC §285.3(a) and (b)(1) and Texas Health and Safety Code, §366.004 and §366.051(a), by failing to obtain authorization prior to constructing, altering, repairing, extending, or operating an on-site sewage facility (OSSF); 30 TAC §285.33(d)(2)(A), by failing to maintain an acceptable surface application area; and 30 TAC §285.91(10), by failing to provide the minimum required separation distance for an OSSF irrigation field of at least 50 feet from edge of the surface application spray area to the creek and at least ten feet from the edge of the surface application spray area to the property line; PENALTY: \$8,500; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5865; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Joseph Gaber dba Cody's Market; DOCKET NUMBER: 2020-1500-PST-E; IDENTIFIER: RN101230654; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases in a manner which will detect a release at a frequency of at least once every 30 days; §334.50(d)(9)(A)(v) by failing to report a suspected release to the TCEQ within 72 hours of discovery; 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate and confirm all suspected releases of regulated substances requiring reporting under 30 TAC §334.72 within 30 days; PENALTY: \$14,677; ENFORCEMENT COORDINATOR: Karolyn Kent, (512) 239-2536; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: PAK NEPAL LLC dba Kwik Stop 1; DOCKET NUMBER: 2023-0182-PST-E; IDENTIFIER: RN105636476; LOCATION: Frankston, Anderson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases in a manner which will detect a release at a frequency of at least once every 30 days, and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$4,651; ENFORCEMENT COORDINATOR: Karolyn Kent, (512) 239-2536; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(8) COMPANY: PARMER/SPECTRUM EAST, L.P.; DOCKET NUMBER: 2022-1431-EAQ-E; IDENTIFIER: RN110275971; LOCATION: Austin, Williamson County; TYPE OF FACILITY: commercial construction site; RULES VIOLATED: 30 TAC §213.4(a)(1),

by failing to obtain approval of an Edwards Aquifer Protection Plan prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5865; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(9) COMPANY: Sheldon Road Municipal Utility District; DOCKET NUMBER: 2021-0775-MWD-E; IDENTIFIER: RN101701209; LOCATION: Houston, Harris County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §217.33 and §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010541002, Monitoring and Reporting Requirements Number 5, by failing to accurately calibrate the totalizing meter for effluent flow measurement on an annual basis; 30 TAC §305.125(1) and (5), TWC, §26.121(a)(1), and TPDES Permit Number WQ0010541002, Operational Requirements Number 1, by failing to ensure the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained, resulting in an unauthorized discharge; and 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0010541002, Operational Requirements Number 1, by failing to ensure the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; PENALTY: \$11,251; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$11,251; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5865; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: SOUTHWEST SHIPYARD, L.P. and MSI HOLDINGS, L.P. dba Southwest Shipyard; DOCKET NUMBER: 2020-1613-MLM-E; IDENTIFIER: RN100248749; LOCATION: Channelview, Harris County; TYPE OF FACILITY: barge cleaning and repair facility; RULES VIOLATED: 30 TAC §324.4(2)(C)(ii) and 40 Code of Federal Regulations (CFR) §279.10(d)(1) and (g), by failing to process, recycle, and market used oil within the state in violation of rules for the management of used oil; 30 TAC §335.2(a), by failing to obtain authorization prior to storing, processing, or disposing of hazardous waste (HW); 30 TAC §335.2(b), by failing to not cause, suffer, allow, or permit its wastes to be processed at an unauthorized facility; 30 TAC §335.6(c), by failing to immediately document any changes or additional information on the facility's Notice of Registration within 90 days of the occurrence of such change or of becoming aware of such additional information; 30 TAC §335.9(a)(2), by failing to report complete and correct Annual Waste Summaries (AWSs); 30 TAC §335.9(a)(2)(B), by failing to submit an AWS before the annual deadline; 30 TAC §335.10(a)(1) and 40 CFR §262.20(a)(1), by failing to have complete and correct manifests for shipments of HW and to include a Texas Waste Code for each HW itemized on a manifest; 30 TAC §335.12(a) and 40 CFR §265.72(f), by failing to prepare a new manifest for a rejected waste; 30 TAC §§335.62, 335.504(a)(2), and 335.511(a), by failing to have complete HW determination process knowledge documentation; 30 TAC §335.69(a)(1)(A) and §335.112(a)(8), and 40 CFR §265.174, by failing to conduct weekly container storage area inspections; and 30 TAC §335.69(a)(4)(A) and §335.112(a)(3), and 40 CFR §265.53(b), by failing to submit a copy of the contingency plan to all local emergency response entities; PENALTY: \$113,365; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$45,346; ENFORCEMENT COORDINATOR: Ken Moller, (512) 534-7550; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202302967

Gitanjali Yadav  
Deputy Director, Litigation  
Texas Commission on Environmental Quality  
Filed: August 15, 2023



#### Enforcement Orders

An agreed order was adopted regarding EliteCurb & Concrete, LLC, Docket No. 2021-1603-AIR-E, on August 15, 2023 assessing \$1,875 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jennifer Peltier, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202303001  
Laurie Gharis  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: August 16, 2023



#### Enforcement Orders

An agreed order was adopted regarding KB MARINE INDUSTRY, LLC and Khang Trong Bui, Docket No. 2019-1159-MLM-E on August 16, 2023 assessing \$45,233 in administrative penalties with \$8,174 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Ashton Holdings, Inc., Docket No. 2020-0218-WQ-E on August 16, 2023 assessing \$8,362 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting David Keagle, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Advanced Powder Solutions Inc., Docket No. 2020-0565-MLM-E on August 16, 2023 assessing \$88,325 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Casey Kurnath, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Equistar Chemicals, LP, Docket No. 2020-0911-AIR-E on August 16, 2023 assessing \$58,350 in administrative penalties with \$11,670 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SI Group, Inc., Docket No. 2020-1255-AIR-E on August 16, 2023 assessing \$155,159 in administrative penalties with \$31,031 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding OXY USA WTP LP, Docket No. 2020-1460-AIR-E on August 16, 2023 assessing \$52,650 in administrative penalties with \$10,530 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Busy B Septic Services, LLC, Docket No. 2020-1497-SLG-E on August 16, 2023 assessing \$25,938 in administrative penalties with \$6,986 deferred. Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding The Dow Chemical Company, Docket No. 2021-0089-AIR-E on August 16, 2023 assessing \$61,250 in administrative penalties with \$7,875 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Duran Gravel Company, Inc, Docket No. 2021-0175-WQ-E on August 16, 2023 assessing \$20,000 in administrative penalties with \$4,000 deferred. Information concerning any aspect of this order may be obtained by contacting Ellen Ojeda, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ONEOK Hydrocarbon, L.P., Docket No. 2021-0463-AIR-E on August 16, 2023 assessing \$25,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Western International Gas & Cylinders, Inc., Docket No. 2021-0481-AIR-E on August 16, 2023 assessing \$6,913 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Flint Hills Resources Corpus Christi, LLC, Docket No. 2021-0730-AIR-E on August 16, 2023 assessing \$25,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Mason, Docket No. 2021-0836-MWD-E on August 16, 2023 assessing \$19,250 in administrative penalties with \$3,850 deferred. Information concerning any aspect of this order may be obtained by contacting Ellen Ojeda, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Energy Transfer Nederland Terminal LLC f/k/a Sunoco Partners Marketing & Terminals L.P., Docket No. 2021-0879-AIR-E on August 16, 2023 assessing \$18,750 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Phillips 66 Company, Docket No. 2021-0897-AIR-E on August 16, 2023 assessing \$45,850 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Austin, Docket No. 2021-0900-MWD-E on August 16, 2023 assessing \$8,250 in administrative penalties with \$1,650 deferred. Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson,



Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Enterprise Products Operating LLC, Docket No. 2021-0915-AIR-E on August 16, 2023 assessing \$57,850 in administrative penalties with \$11,570 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding G Square Ventures LLC dba Fast Trip, Docket No. 2021-0929-PST-E on August 16, 2023 assessing \$24,188 in administrative penalties with \$4,837 deferred. Information concerning any aspect of this order may be obtained by contacting Karolyn Kent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Cypress Valley Water Supply Corporation, Docket No. 2021-0968-PWS-E on August 16, 2023 assessing \$3,510 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Samantha Salas, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Lake LBJ Boutique Resort & Marina, LLC dba Sunrise Beach Marina and Georg Pengg dba Sunrise Beach Marina, Docket No. 2021-1037-MLM-E on August 16, 2023 assessing \$10,242 in administrative penalties with \$2,048 deferred. Information concerning any aspect of this order may be obtained by contacting Karolyn Kent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Occidental Chemical Corporation, Docket No. 2021-1067-AIR-E on August 16, 2023 assessing \$13,125 in administrative penalties with \$2,625 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of La Feria dba La Feria City Shop, Docket No. 2021-1204-PST-E on August 16, 2023 assessing \$12,000 in administrative penalties with \$2,400 deferred. Information concerning any aspect of this order may be obtained by contacting Karolyn Kent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Village Creek Church of Christ, Inc., Docket No. 2021-1209-PWS-E on August 16, 2023 assessing \$2,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Megan L. Grace, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Fairway Methanol LLC, Docket No. 2021-1251-AIR-E on August 16, 2023 assessing \$21,225 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding William F. Gilpin dba Aero, Docket No. 2021-1313-MLM-E on August 16, 2023 assessing \$31,363 in administrative penalties with \$6,272 deferred. Information concerning any aspect of this order may be obtained by contacting Karolyn

Kent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Exxon Mobil Corporation, Docket No. 2021-1379-AIR-E on August 16, 2023 assessing \$8,325 in administrative penalties with \$1,665 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Braskem America, Inc., Docket No. 2021-1450-AIR-E on August 16, 2023 assessing \$8,175 in administrative penalties with \$1,635 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Laredo, Docket No. 2021-1455-PWS-E on August 16, 2023 assessing \$69,980 in administrative penalties with \$13,996 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding INEOS US Chemicals Company, Docket No. 2021-1563-AIR-E on August 16, 2023 assessing \$150,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Camo Chemical LLC, Docket No. 2022-0024-AIR-E on August 16, 2023 assessing \$12,875 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Enterprise Products Operating LLC, Docket No. 2022-0080-AIR-E on August 16, 2023 assessing \$8,625 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Braskem America, Inc., Docket No. 2022-0102-AIR-E on August 16, 2023 assessing \$28,050 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding San Diego Municipal Utility District No. 1, Docket No. 2022-0162-MWD-E on August 16, 2023 assessing \$17,387 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Mark Gamble, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Kinder Morgan Texas Pipeline LLC, Docket No. 2022-0300-AIR-E on August 16, 2023 assessing \$18,750 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TotalEnergies Petrochemicals & Refining USA, Inc., Docket No. 2022-0380-AIR-E on August 16, 2023 assessing \$14,250 in administrative penalties with \$2,850

deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Texas Department of Criminal Justice, Docket No. 2022-0383-MWD-E on August 16, 2023 assessing \$27,000 in administrative penalties with \$5,400 deferred. Information concerning any aspect of this order may be obtained by contacting Laura Draper, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Verner Middleton, Docket No. 2022-0554-MLM-E on August 16, 2023 assessing \$8,250 in administrative penalties with \$1,650 deferred. Information concerning any aspect of this order may be obtained by contacting Karolyn Kent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MO-VAC SERVICE COMPANY, Docket No. 2022-0644-WQ-E on August 16, 2023 assessing \$21,231 in administrative penalties with \$4,246 deferred. Information concerning any aspect of this order may be obtained by contacting John Thibodeaux, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Michael Burris and Christine Taylor, Docket No. 2022-0759-MSW-E on August 16, 2023 assessing \$7,875 in administrative penalties with \$1,575 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Cross Timbers Water Supply Corporation, Docket No. 2022-0980-PWS-E on August 16, 2023 assessing \$11,230 in administrative penalties with \$2,246 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding SAM RAYBURN WATER, INC., Docket No. 2022-1351-UTL-E on August 16, 2023 assessing \$895 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Megan L. Grace, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding SAM RAYBURN WATER, INC., Docket No. 2022-1352-UTL-E on August 16, 2023 assessing \$510 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Megan L. Grace, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Undine Texas, LLC, Docket No. 2022-1480-PWS-E on August 16, 2023 assessing \$3,525 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Miles Wehner, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Treasure Island Municipal Utility District, Docket No. 2022-1664-PWS-E on August 16, 2023 assessing \$4,210 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal,

Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Trinity Rural Water Supply Corporation, Docket No. 2023-0399-PWS-E on August 16, 2023 assessing \$5,750 in administrative penalties with \$5,750 deferred. Information concerning any aspect of this order may be obtained by contacting Ilia Perez-Ramirez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202303005

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 16, 2023



### Notice of a Public Meeting and a Proposed Renewal with Amendment of General Permit TXR040000 Authorizing the Discharge of Stormwater

The Texas Commission on Environmental Quality (TCEQ or commission) proposes to renew and amend Texas Pollutant Discharge Elimination System General Permit TXR040000. This general permit authorizes the discharge of stormwater and certain types of non-stormwater to surface water in the state from small (Phase II) municipal separate storm sewer systems (MS4s). The proposed general permit applies to the entire state of Texas. General permits are authorized by Texas Water Code, §26.040.

**PROPOSED GENERAL PERMIT.** The executive director has prepared a draft general permit renewal with amendments of the existing general permit that authorizes the discharge of stormwater and certain types of non-stormwater from small MS4s. The proposed changes to the general permit include but are not limited to changing the permitting approach from a "two-step general permit" to a "comprehensive general permit" as described under the federal *2017 National Pollutant Discharge Elimination System (NPDES) MS4 General Permit Remand Rule (81 FR 89320, Dec. 9, 2016)*. All the proposed changes to the general permit are described in the fact sheet.

The general permit specifies which small MS4s must obtain permit coverage, which are eligible for a waiver from permit coverage based on population, and which must obtain individual permit coverage. Discharges from small MS4s of stormwater and certain types of non-stormwater are eligible for authorization under the general permit only if the small MS4 is located within an urban area with a population of at least 50,000 people, as defined by the United States Census Bureau for the 2000, 2010, or 2020 Decennial Censuses. Small MS4s located outside of an urban area with a population of at least 50,000 people may be designated by the TCEQ as requiring authorization and may also be permitted under the general permit. Non-stormwater discharges that are not specifically listed in the general permit are not authorized. No significant degradation of high-quality waters is expected and existing water uses will be maintained and protected.

Operators of small MS4s seeking authorization under this general permit would be required to submit a Notice of Intent within 180 days following the effective date of this general permit. A Stormwater Management Program must be developed according to the conditions of the comprehensive general permit to reduce the discharge of pollutants from the small MS4 to the maximum extent practicable.

The executive director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP)

according to General Land Office regulations and has determined that the action is consistent with applicable CMP goals and policies.

A copy of the proposed general permit and fact sheet will be available for a minimum of 30 days for viewing and copying at the TCEQ Office of the Chief Clerk located at the TCEQ Austin office, at 12100 Park 35 Circle, Building F. These documents will also be available at the TCEQ's 16 regional offices and on the TCEQ website at [https://www.tceq.texas.gov/permitting/stormwater/ms4/WQ\\_ms4\\_small\\_TXRO4.html](https://www.tceq.texas.gov/permitting/stormwater/ms4/WQ_ms4_small_TXRO4.html).

**PUBLIC COMMENT AND PUBLIC MEETING.** You may submit public comments on this proposed general permit in writing or orally at the public meeting held by the TCEQ. The purpose of a public meeting is to provide the opportunity to submit written or oral comment or to ask questions about the proposed general permit. A public meeting is not a contested case hearing.

**The hybrid in-person and virtual public meeting will be held at 1:30 p.m., September 18, 2023, in TCEQ's complex at 12100 Park 35 Circle, Building E, Room 201S, Austin, Texas 78753.**

**Information for registering and attending the public meeting virtually is available at [https://www.tceq.texas.gov/permitting/stormwater/stormwater\\_stakeholders\\_group.html](https://www.tceq.texas.gov/permitting/stormwater/stormwater_stakeholders_group.html).**

**Written public comments must be received by the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/> by the end of this comment period on September 18, 2023.**

**ALTERNATIVE LANGUAGE NOTICE.** Alternative language notice in Spanish is available at [https://www.tceq.texas.gov/permitting/stormwater/ms4/WQ\\_ms4\\_small\\_TXRO4.html](https://www.tceq.texas.gov/permitting/stormwater/ms4/WQ_ms4_small_TXRO4.html). El aviso de idioma alternativo en español está disponible en [https://www.tceq.texas.gov/permitting/stormwater/ms4/WQ\\_ms4\\_small\\_TXRO4.html](https://www.tceq.texas.gov/permitting/stormwater/ms4/WQ_ms4_small_TXRO4.html).

**MAILING LISTS.** In addition to submitting public comments, you may ask to be placed on a mailing list to receive future public notices mailed by the TCEQ Office of the Chief Clerk. You may request to be added to: 1) the mailing list for this specific general permit; 2) the permanent mailing list for a specific county; or 3) both. Clearly specify the mailing lists to which you wish to be added and send your request to the TCEQ Office of the Chief Clerk at the address previously mentioned. Unless you otherwise specify, you will be included only on the mailing list for this specific general permit.

**INFORMATION.** If you need more information about this general permit or the permitting process, please call the TCEQ Public Education Program, toll free, at 1-800-687-4040. General information about the TCEQ can be found at our website at <https://www.tceq.texas.gov>.

Persons with disabilities who need special accommodations at the public meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least one week prior to the meeting.

Further information may also be obtained by calling TCEQ's Water Quality Division, Stormwater Team, at (512) 239-4671.

*Si desea información en español, puede llamar al 1-800-687-4040.*

TRD-202303004

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: August 16, 2023



## Notice of Correction to Agreed Order Number 5

In the December 2, 2022, issue of the *Texas Register* (47 TexReg 8061), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 5, for COWBOY STAR INCORPORATED dba Smith Corner; Docket Number 2021-1447-PST-E. The error is as submitted by the commission.

The reference to the penalty should be corrected to read: "\$10,025."

For questions concerning the error, please contact Michael Parrish at (512) 239-2548.

TRD-202302968

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: August 15, 2023



## Notice of Costs to Administer the Voluntary Cleanup Program and the Innocent Owner/Operator Program

In accordance with Texas Health and Safety Code, §361.613 (pertaining to the Voluntary Cleanup Program (VCP)) and 30 Texas Administrative Code §333.43 (pertaining to the Innocent Owner/Operator Program (IOP)), the executive director of the Texas Commission on Environmental Quality (TCEQ or commission) annually shall calculate the commission's costs to administer the VCP and the IOP, and shall publish in the *Texas Register* the rates established for the purpose of identifying the costs recoverable by the commission. The TCEQ has calculated and is publishing the bill rate for both the VCP and the IOP as \$115 per hour for the commission's Fiscal Year 2024.

The VCP and the IOP are implemented by the same TCEQ staff. Therefore, a single hourly bill rate for both programs is appropriate. The hourly bill rate is determined based upon current projections for staff salaries for the Fiscal Year 2024, including the fringe benefit rate and the indirect cost rate, minus anticipated federal funding that the commission will receive, and then divided by the estimated number of staff hours necessary to complete the program tasks. Fringe benefits include retirement, social security, and insurance expenses and are calculated at a set rate for the entire agency. The current fringe benefit rate is 38.93% of the budgeted salaries. Indirect costs include allowable overhead expenses and also are calculated at a set rate for the entire agency. The current indirect cost rate is 34.33% of the budgeted salary. The hourly bill rate was calculated and then rounded to the nearest whole dollar amount. The commission will use an hourly bill rate of \$115 for both the VCP and the IOP for the Fiscal Year 2024. After an applicant's initial \$1,000 application fee has been depleted for the VCP or the IOP review and oversight costs, invoices will be sent monthly to the applicant, or designee, for payment.

The commission anticipates receiving federal funding during Fiscal Year 2024 for the continued development and enhancement of the VCP and the IOP. If the federal funding anticipated for Fiscal Year 2024 does not become available, the commission may calculate and publish a new hourly bill rate. Federal funding of the VCP and the IOP should occur prior to October 1, 2023.

For more information, please contact Ms. Merrie Smith, P.G., VCP-CA Section, Remediation Division, Texas Commission on Environmental Quality, MC 221, 12100 Park 35 Circle, Austin, Texas 78753, or call (512) 239-5051, or email [merrie.smith@tceq.texas.gov](mailto:merrie.smith@tceq.texas.gov).

TRD-202302976



### Notice of District Petition

Notice issued August 16, 2023

TCEQ Internal Control No. D-06162023-034; Peacock Capital Holdings, LLC, a Texas Limited Liability Company, (Petitioner) filed a petition for creation of Travis County Municipal Utility District No. 28 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there is one lienholder, Capital Farm Credit, ACA, on the property to be included in the proposed District and the aforementioned entity has consented to the creation of the District; (3) the proposed District will contain approximately 1,386.774 acres of land located within Travis County, Texas; and (4) the land to be included in the proposed District is not within the corporate boundaries or extraterritorial jurisdiction of any municipality. The petition further states that the proposed District will purchase, design, construct, acquire, maintain, own, operate, repair, improve and extend a waterworks and sanitary sewer system for residential and commercial purposes, and will perform the construction, acquisition, improvement, extension, maintenance and operation of works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the District, and to control, abate and amend local storm waters or other harmful excesses of waters, all as more particularly described in an engineer's report filed simultaneously with the filing of this petition, to which reference is hereby made for more detailed description, and such other purchase, construction, acquisition, maintenance, ownership, operation, repair, improvement and extension of such additional facilities, including roads, park and recreational facilities, systems, plants and enterprises as shall be consistent with all of the purposes for which the District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner, from the information available at this time, that the cost of said project will be approximately \$35,250,000 (including \$24,500,000 for water, wastewater, and drainage, \$2,750,000 for recreation, and \$8,000,000 for roads).

#### INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at [www.tceq.texas.gov/agency/cc/pub\\_notice.html](http://www.tceq.texas.gov/agency/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results. The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at

the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at [www.tceq.texas.gov](http://www.tceq.texas.gov).

TRD-202303002

Laurie Gharis  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: August 16, 2023



### Notice of District Petition

Notice issued August 16, 2023

TCEQ Internal Control No. D-06132023-022; Terrell Timmermann Farms, LP, a Texas limited partnership, (Petitioner) filed a petition for creation of Coupland Municipal Utility District No. 1 of Williamson County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ.

The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 281.371 acres located within Williamson County, Texas; and (4) all of the land within the proposed District is entirely within the extraterritorial jurisdiction of the City of Coupland. By Resolution No. 2022-12-8-01, passed and approved on January 25, 2023, the City of Coupland, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states that the proposed District will: (1) purchase, construct, acquire, provide, operate, maintain, repair, improve, or extend, inside or outside of its boundaries, any and all works, improvements, facilities, systems, plants, equipment, and appliances necessary or helpful to supply and distribute water for municipal, domestic, industrial, and commercial purposes; (2) collect, transport, process, dispose of, and control domestic, industrial, and commercial wastes; (3) gather, conduct, divert, abate, amend, and control local storm water or other local harmful excesses of water or provide adequate drainage in the proposed District; and (4) purchase, construct, acquire, provide, operate, maintain, repair, improve, or extend, inside or outside of its boundaries, such additional facilities, systems, plants, equipment, appliances, and enterprises as shall be consonant with all of the purposes for which the proposed District is created. Additional work and services which may be performed by the proposed District include the purchase, construction, acquisition, provision, operation, maintenance, repair, improvement, extension, and development of a roadway system and park and recreational facilities for the inhabitants of the proposed District. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is

estimated by the Petitioners that the cost of said project will be approximately \$37,050,000 (\$29,000,000 for water, wastewater, and drainage, \$5,600,000 for roads, and \$2,450,000 for recreation).

#### INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at [www.tceq.texas.gov/agency/cc/pub\\_notice.html](http://www.tceq.texas.gov/agency/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at [www.tceq.texas.gov](http://www.tceq.texas.gov).

TRD-202303003

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 16, 2023



#### Notice of Opportunity to Comment on a Shutdown/Default Order of an Administrative Enforcement Action

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Order (S/DO). Texas Water Code (TWC), §26.3475, authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill, and overflow prevention, and/or after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an Executive

Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations, the proposed penalty, the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 26, 2023**. The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 26, 2023**. The commission's attorney is available to discuss the S/DO and/or the comment procedure at the listed phone number; however, comments on the S/DO shall be submitted to the commission in **writing**.

(1) COMPANY: Samad Brothers LLC dba Kingsley One Stop Foodmart; DOCKET NUMBER: 2021-1182-PST-E; TCEQ ID NUMBER: RN100525195; LOCATION: 2518 West Kingsley Road, Garland, Dallas County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting deliveries of regulated substances into the USTs; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases in a manner which will detect a release at a frequency of at least once every 30 days; 30 TAC §334.51(a)(6), by failing to assure that all spill and overflow prevention devices are maintained in good operating condition; and 30 TAC §334.605(d), by failing to retrain Class A and B operators by January 1, 2020, with a course submitted to and approved by TCEQ after April 1, 2018, regardless of the three-year re-training requirement; PENALTY: \$57,414; STAFF ATTORNEY: Marilyn Norrod, Litigation, MC 175, (512) 239-5916; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202302970

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: August 15, 2023



#### Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an op-

portunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 26, 2023**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 26, 2023**. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission **in writing**.

(1) COMPANY: Grand Harbor Water Supply Corporation; DOCKET NUMBER: 2022-1311-UTL-E; TCEQ ID NUMBER: RN104497946; LOCATION: south side of County Road 1705, approximately 1,000 feet west of the intersection of Boy Scout Road and County Road 1705 near Bridgeport, Wise County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to TCEQ for approval an emergency preparedness plan that demonstrates the Utility's ability to provide emergency operations; PENALTY: \$950; STAFF ATTORNEY: Megan L. Grace, Litigation, MC 175, (512) 239-3334; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Jeffrey H. Brennan dba P & B Water; DOCKET NUMBER: 2021-0629-PWS-E; TCEQ ID NUMBER: RN102953718; LOCATION: 14271 Natalie Street, Houston, Harris County; TYPE OF FACILITY: public water system; RULES VIOLATED: TWC, §5.702 and 30 TAC §291.76, by failing to pay regulatory assessment fees for the TCEQ Public Utility Account regarding Certificate of Convenience and Necessity Number 12021 for calendar years 2018 - 2020; TWC, §5.702 and 30 TAC §290.51(a)(6), by failing to pay annual Public Health Service fees and any associated late fees for TCEQ Financial Administration Account Number 91010681 for Fiscal Year 2021; 30 TAC §§290.106(e), 290.107(e), and 290.115(e), by failing to provide the results of nitrate, volatile organic chemical contaminants, and Stage 2 Disinfection Byproducts sampling to the executive director (ED) for the January 1, 2020 - December 31, 2020 monitoring period; 30 TAC §290.271(b) and §290.274(a) and (c) and TCEQ Agreed Order Docket Number 2018-1217-PWS-E, Ordering Provision Numbers 2.a.ii and 2.b.ii, by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st of each year, and failing to submit to TCEQ by July 1st of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data for calendar year 2019; and 30 TAC §290.108(e), by failing to provide the results of radionuclides sampling to the ED for the January 1, 2013 - December 31, 2018 monitoring period; PENALTY: \$2,625; STAFF

ATTORNEY: Clayton Smith, Litigation, MC 175, (512) 239-6224; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: Jonathan Dodd; DOCKET NUMBER: 2021-1193-WQ-E; TCEQ ID NUMBER: RN111130613; LOCATION: east of County Road 3451, south of the intersection of County Road 3440 and County Road 3451 near Paradise, Wise County; TYPE OF FACILITY: construction site; RULES VIOLATED: TWC, §26.121, 40 Code of Federal Regulations §122.26(c), and 30 TAC §281.25(a)(4), by failing to obtain authorization to discharge stormwater associated with construction activities; PENALTY: \$4,500; STAFF ATTORNEY: Casey Kurnath, Litigation, MC 175, (512) 239-5932; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Michael Ruff dba Premium Sandstone, LLC and Premium Sandstone, LLC; DOCKET NUMBER: 2020-1302-WQ-E; TCEQ ID NUMBER: RN106222235; LOCATION: northside of Interstate Highway 20, two miles east of the intersection of Interstate Highway 20 and State Highway 193, Gordon, Palo Pinto County; TYPE OF FACILITY: aggregate production operation (APO); RULES VIOLATED: 30 TAC §342.25(d), by failing to renew the APO registration annually as regulated activities continued; and TWC, §26.121(c) and §26.556, and 30 TAC §331.74(a) and §331.75, by failing to maintain authorization to discharge water associated with quarry activities to water in the State located in a water quality protection area in the John Graves Scenic Riverway; PENALTY: \$21,250; STAFF ATTORNEY: David Keagle, Litigation, MC 175, (512) 239-3923; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202302971

Gitanjali Yadav  
Deputy Director, Litigation  
Texas Commission on Environmental Quality  
Filed: August 15, 2023

◆ ◆ ◆  
**Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions**

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 26, 2023**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 26, 2023**. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the DO shall be submitted to the commission in **writing**.

(1) COMPANY: James E. Boyd; DOCKET NUMBER: 2021-0799-PST-E; TCEQ ID NUMBER: RN102059292; LOCATION: Highway 171 and Farm-to-Market Road 308, Malone, Hill County; TYPE OF FACILITY: underground storage tank (UST) system; RULES VIOLATED: 30 TAC §334.7(d)(1)(B) and (3), by failing to update the UST registration within 30 days from the date of the occurrence of the change; and 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and 30 TAC §334.54(b)(2), by failing to maintain all piping, pumps, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; PENALTY: \$6,562; STAFF ATTORNEY: Erandi Ratnayake, Litigation, MC 175, (512) 239-6515; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: Laredo Holdings Investments, LLC; DOCKET NUMBER: 2021-1637-PWS-E; TCEQ ID NUMBER: RN110827730; LOCATION: 23183 Interstate Highway 35 near Encinal, Webb County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code, §341.035(a) and 30 TAC §290.39(e)(1) and (h)(1), by failing to submit plans and specifications to the executive director for review and approval prior to the construction of a new public water supply; and 30 TAC §290.41(c)(3)(A), by failing to submit well completion data for review and approval prior to placing the facility's public drinking water well into service; PENALTY: \$1,020; STAFF ATTORNEY: Erandi Ratnayake, Litigation, MC 175, (512) 239-6515; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(3) COMPANY: SRC Water Supply Inc; DOCKET NUMBER: 2022-1163-UTL-E; TCEQ ID NUMBER: RN101174894; LOCATION: 22 Christi Lane, Krum, Denton County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to TCEQ for approval an emergency preparedness plan that demonstrates the utility's ability to provide emergency operations; PENALTY: \$500; STAFF ATTORNEY: Megan L. Grace, Litigation, MC 175, (512) 239-3334; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202302972  
Gitanjali Yadav  
Deputy Director, Litigation  
Texas Commission on Environmental Quality  
Filed: August 15, 2023



Notice of Public Meeting Proposed Air Quality Permit Number 172972

**APPLICATION.** Texas Aggregates, LLC., has applied to the Texas Commission on Environmental Quality (TCEQ) for:

Issuance of Permit 172972

This application would authorize construction of the Rock Crushing Plant located at 301 Farm-to-Market 153, Smithville, Bastrop County, Texas 78957. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. <https://gisweb.tceq.texas.gov/LocationMapper/?marker=-97.146972,30.027198&level=13>. The facility will emit the following contaminants: particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less.

This application was submitted to the TCEQ on June 2, 2023. The executive director has determined the application is administratively complete and will conduct a technical review of the application.

**PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments to the Office of the Chief Clerk at the address below.** The TCEQ will consider all public comments in developing a final decision on the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application, and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. At the conclusion of the comment period, all formal comments will be considered before a decision is reached on the permit application. A written response to all formal comments will be prepared by the executive director and will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

**The Public Meeting is to be held:**

**Monday, September 18, 2023 at 7:00 p.m.**

**VFW Post 1309**

**557 NW Loop 230**

**Smithville, Texas 78957**

**INFORMATION.** Members of the public are encouraged to submit written comments anytime during the public meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/>. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our Web site at [www.tceq.texas.gov](http://www.tceq.texas.gov). *Si desea información en español, puede llamar al (800) 687-4040.*

**INFORMATION AVAILABLE ONLINE.** For details about the status of the application, visit the Commissioners' Integrated Database (CID) at [www.tceq.texas.gov/goto/cid](http://www.tceq.texas.gov/goto/cid). Once you have access to the CID using the link, enter the permit number at the top of this form.

The application will be available for viewing and copying at the TCEQ central office, the TCEQ Austin regional office, and the Bastrop County Clerk's Office, 803 Pine Street, Room 112, Bastrop, Bastrop County. The facility's compliance file, if any exists, is available for public review in the Austin regional office of the TCEQ. Further information may also be obtained from Texas Aggregates, LLC., P.O. Box MM, Bastrop, Texas 78602-1984 or by calling Mr. Paul W. Henry, P.E., Engineer, Henry Environmental Services, at (512) 281-6555.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Notice Issuance Date: August 15, 2023

TRD-202302981

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 16, 2023



### Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on August 11, 2023, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Ranch Hand Apartments, LLC; SOAH Docket No. 582-23-05477; TCEQ Docket No. 2022-0063-PWS-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Ranch Hand Apartments, LLC on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Meghan Taack, Office of the Chief Clerk, (512) 239-3300.

TRD-202302980

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 16, 2023



### General Land Office

#### Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 26. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of August 7, 2023 to August 11, 2023. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§30.20(f),

30.30(h), and 30.40(e), the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, August 18, 2023. The public comment period for this project will close at 5:00 p.m. on Sunday, September 17, 2023.

Federal License and Permit Activities:

**Applicant:** Pasadena Refining Systems, Inc.

**Location:** The project site is located in Buffalo Bayou/Houston Ship Channel at 111 Red Bluff Road, in Pasadena, Harris County, Texas.

**Latitude and Longitude:** 29.726247, -95.210496

**Project Description:** The applicant proposes to modify Department of the Army (DA) Permit SWG-2023-00226 (formerly 8225-02) by adding structural components to improve operational efficiencies of the existing terminal dock infrastructure. The project components include construction of a proposed 19.5-foot by 18.5-foot by 7.5-foot ship-gangway platform with one 54-inch-diameter and two 30-inch-diameter pile supports, as well as installation of four proposed catwalks as follows:

- One catwalk extension with six legs connecting to two existing breasting dolphins, the existing dock, and an existing fire monitor on the southwest side of the project, supported by a total of fifteen 12-inch-diameter pipe piles,
- One catwalk to an existing breasting dolphin positioned from northeast to southeast on the northeast side of the project, which requires a 36-inch-diameter pile,
- One catwalk to the proposed gangway positioned northwest to northeast on the northeast side of the project, and
- One catwalk positioned from southwest to northeast on the northeast side of the project.

The applicant stated that the purpose of the project is to add to the required improvements to the existing infrastructure for the continued use of the applicant's existing facility. The modifications would help to aid the applicant in operational efficiencies and their strategic corporate initiatives.

The applicant has stated that they have avoided and minimized the environmental impacts by utilizing existing infrastructure while minimizing the required construction activity at the project site. The applicant also stated that they designed the project to avoid and/or minimize impacts to wetlands and water bottoms to the maximum extent practicable. Additionally, there are no special aquatic sites identified within the project boundary. The applicant has not proposed to mitigate for the proposed impacts because the project involves the installation of structures and there are no impacts to special aquatic sites.

**Type of Application:** U.S. Army Corps of Engineers permit application # SWG- 2023-00226. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899.

**CMP Project No:** 23-1355-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701, or via email at [pialegal@glo.texas.gov](mailto:pialegal@glo.texas.gov). Comments should be sent to the Texas General Land Office Coastal Management Program Coordinator at the above address or via email at [federal.consistency@glo.texas.gov](mailto:federal.consistency@glo.texas.gov).

TRD-202302969



Mark Havens  
Chief Clerk  
General Land Office  
Filed: August 15, 2023

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## Texas Health and Human Services Commission

### Notice of Stakeholder Engagement Meetings for Medicaid Payment Rates

#### MEETINGS.

The Texas Health and Human Services Commission (HHSC) will conduct stakeholder engagement meetings on September 14, 2023, to receive comments on Medicaid payment rate topics that may potentially be addressed at the upcoming November 2023 rate hearings. Commentary will be collected solely on the topics listed in this notice. Proposed rates will not be published at this time.

The meetings will be held online only at the following times according to topic areas:

Acute Care Services: September 14, 2023, 9:00 a.m. - 11:00 a.m.

Long-term Services & Supports: September 14, 2023, 11:30 a.m. - 1:30 p.m.

To attend online: The meetings will be held online via GoToWebinar. Visit the following GoToWebinar link to register to attend one or both of the online meetings. After registering, you will receive a confirmation email containing information about joining the webinar.

<https://attendee.gotowebinar.com/register/7882207977242442838>

Webinar ID: 290-857-683

HHSC will record the meetings. The recording will be archived and can be accessed on-demand at: <https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings>.

HHSC may limit speakers' time to ensure all attendees wishing to present public comment are afforded an opportunity to do so. HHSC reserves the right to end an engagement meeting if no participants have registered to present public comments within the first 30 minutes of the meeting.

#### TOPICS.

Below is a list of topics that HHSC will collect commentary for during the stakeholder engagement meetings. These topics may potentially be presented at the subsequent rate hearing in November 2023. The final list of topics to be presented at the November 2023 rate hearing is at the discretion of HHSC.

Acute Care Services - Calendar Fee Review:

- Allergy Tests;
- Auditory System Surgery;
- Autism Services;
- Blood Products;
- Cardiovascular Services incl. Cardiography & Echocardiography;
- Clinical Lab;
- Dialysis Services;
- Durable Medical Equipment;
- Ear, Nose and Throat;
- Gastroenterology;

- Intravenous Treatment including Chemotherapy;
- "K" Codes;
- Male Genital System Surgery;
- Medicine (Other);
- Musculoskeletal System Surgery;
- Noninvasive Vascular Diagnostic Studies;
- Nuclear Medicine;
- Outpatient Behavioral Health Services;
- Physician Administered Drugs - NDCX;
- Physician Administered Drugs - Non-Oncology;
- Physician Administered Drugs - Oncology;
- Physician Administered Drugs - Vaccines & Toxoids;
- Pulmonary Services;
- Radiation Oncology; and
- Substance Use Disorder Services.

Acute Care Services - Medical Policy Review:

- Certified Family Partners; and
- Vendor Drug Program (VDP) Drug Cleanup.

Acute Care Services - Healthcare Common Procedure Coding System (HCPCS):

- Quarterly Healthcare Common Procedure Coding System (HCPCS) Updates.

Long-term Services & Supports:

- Emergency Response Services; and
- Adult Foster Care

#### WRITTEN COMMENTS.

Written comments regarding the proposed topics may be submitted in lieu of, or in addition to, oral comments until 5:00 p.m. the day following the meetings, September 15, 2023. Written comments may be sent by U.S. mail, overnight mail, fax, or email.

U.S. Mail:

Texas Health and Human Services Commission

Attention: Provider Finance Department

Mail Code H-400

P.O. Box 149030

Austin, Texas 78714-9030

Overnight mail or special delivery mail:

Texas Health and Human Services Commission

Attn: Provider Finance Department

North Austin Complex

Mail Code H-400

4601 Guadalupe St

Austin, Texas 78751

Fax: Attention: Provider Finance at (512) 730-7475

Email: [ProviderFinanceDept@hhs.texas.gov](mailto:ProviderFinanceDept@hhs.texas.gov)

PREFERRED COMMUNICATION.

Email or telephone communication is preferred.

Persons with disabilities who wish to participate in the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202302965

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: August 15, 2023



## Texas Department of Insurance

### Company Licensing

Application for Farmers Mutual Aid Association of Washington County, a domestic fire and/or casualty company, to change its name to Farmers Mutual Insurance of Washington County. The home office is in Brenham, Texas.

Application for incorporation in the state of Texas for TEXiCARE Health Insurance Company, a domestic life, accident and/or health company. The home office is in Austin, Texas.

Application to do business in the state of Texas for CopperPoint Premier Insurance Company, a foreign fire and/or casualty company. The home office is in Phoenix, Arizona.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of John Carter, 1601 Congress Ave., Suite 6.900, Austin, Texas 78711.

TRD-202302997

Justin Beam

Chief Clerk

Texas Department of Insurance

Filed: August 16, 2023



## Texas Department of Licensing and Regulation

### Notice of Vacancies on Mold Assessment and Remediation Advisory Board

The Texas Department of Licensing and Regulation (Department) announces eleven vacancies on the Mold Assessment and Remediation Advisory Board (Board) established by Occupations Code, Section 1958.001. The purpose of the Board is to provide advice and recommendations to the Texas Commission of Licensing and Regulation (Commission) and the Department on technical matters relevant to the administration of this chapter, standards or performance and work practices for mold assessment or remediation; qualifications for the issuance or renewal of a license, including any training or continuing education; and other issues affecting mold assessment and remediation; rules and educational matters. The Board meets at the call of the Executive Director of the Department or the presiding officer of the Commission. Service as a Board member is voluntary, and compensation is not authorized by law. **This announcement is for:**

- three members who are licensed and engaged in mold assessment as consultants

- three members who are licensed and engaged in mold remediation as contractors

- two members who are building contractors and principally engaged in home construction and who are members of a statewide building trade association

- one member who is a representative of an insurance industry

- one member who is a representative of an accredited mold training provider; and

- one member who represents the public

The Board consists of eleven members appointed for staggered six-year terms, with the terms of three or four members expiring on February 1 of each odd-numbered year. by the presiding officer of the Commission, with the approval of the Commission. The Board is composed of the following members:

- three members who are licensed and engaged in mold assessment as consultants

- three members who are licensed and engaged in mold remediation as contractors

- two members who are building contractors and principally engaged in home construction and who are members of a statewide building trade association

- one member who is a representative of an insurance industry

- one member who is a representative of an accredited mold training provider; and

- one member who represents the public

Interested persons should complete an application on the Department website at: <https://www.tdlr.texas.gov/AdvisoryBoard/login.aspx>. Applicants can also request an application from the Department by telephone (800) 803-9202 or e-mail [advisory.boards@tdlr.texas.gov](mailto:advisory.boards@tdlr.texas.gov).

**These are not paid positions and there is no compensation or reimbursement for serving on the committee.**

TRD-202302988

Mike Arismendez

Executive Director

Texas Department of Licensing and Regulation

Filed: August 16, 2023



## Texas Lottery Commission

### Scratch Ticket Game Number 2527 "PINK DIAMONDS"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2527 is "PINK DIAMONDS". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2527 shall be \$10.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2527.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 03, 04, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 2X SYMBOL, 5X SYMBOL, DIAMOND SYMBOL, \$10.00, \$20.00, \$30.00, \$50.00, \$100, \$300, \$1,000, \$10,000 and \$250,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2527 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI

30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
51	FFON
52	FFTO
53	FFTH
54	FFFR
55	FFFV
2X SYMBOL	DBL
5X SYMBOL	WINX5
DIAMOND SYMBOL	WIN\$

\$10.00	TEN\$
\$20.00	TWY\$
\$30.00	TRTY\$
\$50.00	FFTY\$
\$100	ONHN
\$300	THHN
\$1,000	ONTH
\$10,000	10TH
\$250,000	250TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2527), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 050 within each Pack. The format will be: 2527-0000001-001.

H. Pack - A Pack of the "PINK DIAMONDS" Scratch Ticket Game contains 050 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The back of Ticket 001 will be shown on the front of the Pack; the back of Ticket 050 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "PINK DIAMONDS" Scratch Ticket Game No. 2527.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "PINK DIAMONDS" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose sixty-six (66) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "DIAMOND" Play Symbol, the player wins the

prize for that symbol instantly. If the player reveals a "2X" Play Symbol, the player wins DOUBLE the prize for that symbol. If the player reveals a "5X" Play Symbol, the player wins 5 TIMES the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly sixty-six (66) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly sixty-six (66) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the sixty-six (66) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the sixty-six (66) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of Play Symbols or Prize Symbols.

B. A Ticket can win as indicated by the prize structure.

C. A Ticket can win up to thirty (30) times.

D. On winning and Non-Winning Tickets, the top cash prizes of \$1,000, \$10,000 and \$250,000 will each appear at least once, except on Tickets winning thirty (30) times and with respect to other parameters, play action or prize structure.

E. Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

F. No matching non-winning YOUR NUMBERS Play Symbols will appear on a Ticket.

G. No matching WINNING NUMBERS Play Symbols will appear on a Ticket.

H. Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols as possible to create matches, unless restricted by other parameters, play action or prize structure.

I. On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

J. All YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbols (i.e., 10 and \$10, 20 and \$20, 30 and \$30 and 50 and \$50).

K. On all Tickets, a Prize Symbol will not appear more than five (5) times, except as required by the prize structure to create multiple wins.

L. The "DIAMOND" (WINS) Play Symbol will never appear on the same Ticket as the "2X" (DBL) or "5X" (WINX5) Play Symbols.

M. The "DIAMOND" (WINS) Play Symbol will win the prize for that Play Symbol.

N. The "DIAMOND" (WIN\$) Play Symbol will never appear more than once on a Ticket.

O. The "DIAMOND" (WIN\$) Play Symbol will never appear on a Non-Winning Ticket.

P. The "DIAMOND" (WIN\$) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

Q. The "2X" (DBL) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

R. The "2X" (DBL) Play Symbol will win DOUBLE the prize for that Play Symbol and will win as per the prize structure.

S. The "2X" (DBL) Play Symbol will never appear more than once on a Ticket.

T. The "2X" (DBL) Play Symbol will never appear on a Non-Winning Ticket.

U. The "5X" (WINX5) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

V. The "5X" (WINX5) Play Symbol will win 5 TIMES the prize for that Play Symbol and will win as per the prize structure.

W. The "5X" (WINX5) Play Symbol will never appear more than once on a Ticket.

X. The "5X" (WINX5) Play Symbol will never appear on a Non-Winning Ticket.

Y. The "2X" (DBL) and "5X" (WINX5) Play Symbols can appear on the same winning Ticket, as per the prize structure.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "PINK DIAMONDS" Scratch Ticket Game prize of \$10.00, \$20.00, \$30.00, \$50.00, \$100 or \$300, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$50.00, \$100 or \$300 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the

procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "PINK DIAMONDS" Scratch Ticket Game prize of \$1,000, \$10,000 or \$250,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "PINK DIAMONDS" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "PINK DIAMONDS" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "PINK DIAMONDS" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 8,040,000 Scratch Tickets in Scratch Ticket Game No. 2527. The approximate number and value of prizes in the game are as follows:



Figure 2: GAME NO. 2527 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$10.00	1,045,200	7.69
\$20.00	482,400	16.67
\$30.00	321,600	25.00
\$50.00	321,600	25.00
\$100	22,646	355.03
\$300	18,827	427.05
\$1,000	1,188	6,767.68
\$10,000	10	804,000.00
\$250,000	5	1,608,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.63. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2527 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2527, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

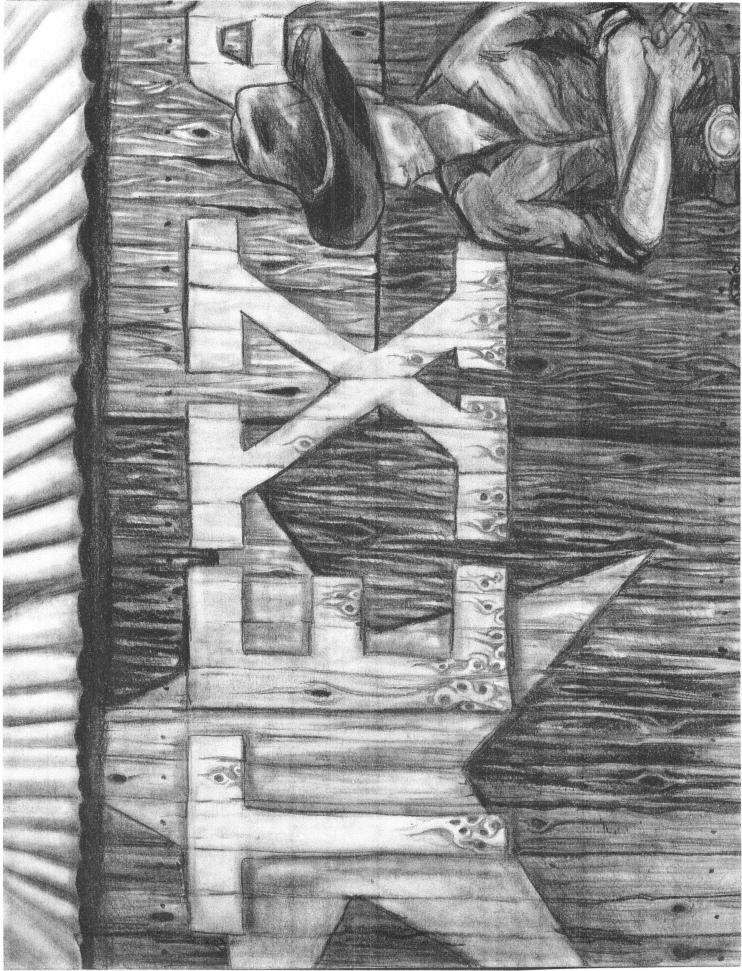
TRD-202302966  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: August 15, 2023

◆ ◆ ◆  
**Workforce Solutions North Texas**

RFP 2023-010 WSNT Program Monitoring Services

Workforce Resource, Inc. dba Workforce Solutions North Texas Board (WSNT) is soliciting proposals from qualified entities to perform program monitoring services of its contractors to satisfy Board's contract obligations with the Texas Workforce Commission (TWC) and the U.S. Department of Labor (DOL). Monitoring shall be consistent with the requirements set forth in the TWC Financial Manual for Grants and Contracts and Texas Administrative Code Chapter 802. Specifically, the RFP is soliciting entities who will monitor the following programs: Child Care, WIOA programs, TANF/Choices, SNAP and Trade Adjustment Act (TAA). The Respondent must be willing to monitor other applicable programs. If programs are added additional costs will be negotiated. The Board's case file system is completely paperless. Nearly all, if not all, monitoring could be accomplished remotely. WSNT serves the Texas Counties of Archer, Baylor, Clay, Cottle, Foard, Hardeman, Jack, Montague, Wichita, Wilbarger, and Young. The RFP can be found on website at <https://ntxworksolutions.org/business-opportunities/>. Deadline for questions is August 25, 2023, by 5:00 p.m. Proposals are due no later than 4:00 p.m. (CDT) Friday, September 8, 2023, to email [wsb@ntxworksolutions.org](mailto:wsb@ntxworksolutions.org).

TRD-202302917  
 Sharon Hulcy  
 Contract Manager  
 Workforce Solutions North Texas  
 Filed: August 10, 2023



## How to Use the Texas Register

**Information Available:** The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules** - sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Review of Agency Rules** - notices of state agency rules review.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules** - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words “TexReg” and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 48 (2023) is cited as follows: 48 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written “48 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 48 TexReg 3.”

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

## Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State’s website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to Update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule’s *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

### TITLE 1. ADMINISTRATION Part 4. Office of the Secretary of State Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

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