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 1. ADMINISTRATION

PART 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 202. INFORMATION SECURITY STANDARDS

The Texas Department of Information Resources (department) proposes amendments to 1 Texas Administrative Code (TAC) Chapter 202, §§202.1, 202.23, 202.27, 202.73, and 202.77, concerning Information Security Standards. The proposed changes update the Texas Risk and Authorization Management Program (TX-RAMP) to incorporate necessary programmatic changes to address cybersecurity and stakeholder needs and expands upon the requirements for the information security assessment and report required by Texas Government Code §2054.515(c). The department also proposes a new section, §202.5, to create a singular location for all TX-RAMP requirements for the department and instructions on how vendors may adhere to the requirements of the program.

The department amends the title of 1 TAC Chapter 202, Subchapter A, to include "and Responsibilities" to reflect the expansion of elements within Subchapter A outside of definitions.

In §202.1, the department corrects certain grammatical errors within definitions used by 1 TAC Chapter 202. The department also revises the definition for "security incident" and creates a new definition for "local government."

In §202.23, for state agencies, and §202.73, for institutions of higher education, the department proposes amendments that establish the minimum requirements for an entity's biennial information security assessment as well as the method and time by which an entity must report its information security assessment to all statutorily-identified parties. In addition, the department proposes amendments that incorporate statutory admonishments to state agencies, local governments, and institutions of higher education on notifyng the department of the conclusion of a security incident within 10 days after the eradication, closure, and recovery from a security incident.

In §202.23, the department incorporates reporting requirements for local government security incidents as required by Senate Bill 271 [88th Legislature (Regular)]. The proposed local government security incident reporting mimic those requirements currently existing for state agencies.

In §202.27, for state agencies, and §202.77, for institutions of higher education, the department proposes amendments to streamline the sections to include only those items that are specific to the type of entity to which the subchapter is applicable.

The department proposes the creation of a new section, §202.5, concerning TX-RAMP. The Texas Legislature passed Senate Bill 475 (SB 475), which created the state risk and authorization management program, in the 87th Regular Session. Under TX-RAMP, the department must provide a standardized approach for security assessment, authorization, and continuous monitoring of cloud computing services. This requires the department to institute a number of regulatory requirements and procedures, both for itself and vendors who are seeking to become or are already TX-RAMP certified, that apply regardless of whether the customer is a state agency or institution of higher education. The proposed new section consolidates department and vendor requirements that are identical regardless of customer entity.

The proposed rule applies to state agencies, institutions of higher education, and, in limited scope as required by Senate Bill 271 [88th Legislative Session (Regular)], local governments, a term which may include approximately 1,100 rural communities as defined by Texas Government Code §2006.001(1-a). It does not apply to small business or micro-businesses. As a result, there is no economic impact on small businesses or micro-businesses as a result of enforcing or administering the amended rule as proposed.

There is no adverse economic impact to rural communities as a result of the proposed rule. Previously, rural communities who found themselves the victim of a security incident were required to address the recovery from the security incident on their own. With the passage of Senate Bill 271 [88th Legislative Session (Regular)], local governments, including rural communities as defined by by Texas Government Code §2006(1-a), are now required to comply with the same security incident reporting rules imposed upon state agencies and institutions of higher education. The department discussed this matter extensively with local governments prior to the passage of Senate Bill 271 [88th Legislative Session (Regular)] to ensure that there was no adverse impact to local governments, including rural communities. Rural communities must report their security incidents by either submitting a form through the department-hosted system or call to a specified department number to report a security incident. This allows rural communities to receive efficient and increased access to department support and resources where before rural communities may not have known who to contact during a security incident and not been able to receive department and/or statewide assistance in a timely fashion. Due to the lack of complexity associated with how rural communities are required to report security incidents and the benefits associated with reporting, there is no adverse economic impact to rural communities.

The department worked extensively with local government representatives during the legislative session and following the passage of Senate Bill 271 [88th Legislative Session (Regular)] to

ensure that the required rules imposed the least administrative burden upon local governments, including rural communities. As proposed, these rules are the least burdensome means of implementing the statutory requirements.

The assessment of the impact of the proposed changes on institutions of higher education was prepared in consultation with the Information Technology Council for Higher Education (ITCHE) in compliance with Texas Government Code §2054.121(c). DIR submitted the proposed amendments to the Information Technology Council of Higher Education for their review. DIR determined that there was no direct impact on institutions of higher education as a result of the proposed rules.

Nancy Rainosek, Chief Information Security Officer for the State of Texas, has determined that there will be no fiscal impact upon state agencies, institutions of higher education, and local government during the first five year period following the adoption of the proposed amendments. By permitting certain third-party certifications or attestations to partially satisfy TX-RAMP certification requirements at the department's discretion and realigning baseline levels to permit entities to assess required needs based upon an impact standard, the department has increased the overall effectiveness of the TX-RAMP rules and addresses the statutory requirement for the department to administer a robust and standardized security assessment program for cloud computing service providers. The department's creation of minimum requirements for the information security assessment that each state agency and institution of higher education must complete allows for a rigorous yet still customizable assessment that entities must complete at least biennially to determine the entity's overall security; many of the minimum requirements align with best practice standards already required for information security and, as such, do not result in a fiscal impact. Furthermore, local government's reporting of security incidents, in alignment with Senate Bill 271 [88th Legislative Session (Regular)] and the proposed rule requirements, allow local governments better access to department expertise and support, which not only results in no fiscal impact but may actually alleviate tension upon local government resources. There is no fiscal impact as a result of the proposed changes to state agencies, institutions of higher education, and local government. Ms. Rainosek has further determined that for each year of the first five years following the adoption of the amended 1 TAC Chapter 202, there are no anticipated additional economic costs to persons or small businesses required to comply with the amendments and proposed new rules.

Pursuant to Texas Government Code §2001.0221, the agency provides the following Governmental Growth Impact Statement for the proposed amendments. The agency has determined the following:

The proposed rules neither create nor eliminate a government program. The TX-RAMP program and the information security assessment and report were created by Senate Bill 475 during the 87th Legislature and the proposed rules merely administer and implement these required items.

Implementation of the proposed rules does not require the creation or elimination of employee positions. There are no additional employees required nor employees eliminated to implement the rule as amended.

Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency. There is no fiscal impact as implementing the rule does not require an increase or decrease in future legislative appropriations.

The proposed rules do not require an increase or decrease in fees paid to the agency.

The proposed rules create a new rule section that consolidates existing duplicated requirements for the department and cloud computing services found in Subchapters B and C. A significant portion of the information contained in the new rule section previously existed in 1 TAC §§202.27 and 202.77.

The proposed rules do not repeal an existing regulation.

The proposed rules do not increase or decrease the number of individuals subject to the rule's applicability. 1 TAC §202.23(e) as proposed now requires local governments to report security incidents as defined by rule. Senate Bill 271 [88th Legislative Session (Regular)] requires local governments to comply with all security incident reporting rules required of state agencies; the department has simply adapted its rule to incorporate this statutory requirement. Beyond the change mandated by Senate Bill 271 [88th Legislative Session (Regular)], the department has neither expanded nor reduced the overall applicability of these rules and, as such, the amount of individuals subject to the rule has not changed.

The proposed rules do not positively or adversely affect the state's economy. The proposed amendments to the TX-RAMP program, local government security incident reporting requirements, and minimum requirements necessary for an entity's information security assessment increase the security of governmental entities.

Written comments on the proposed rules may be submitted to Christi Koenig Brisky, Assistant General Counsel, 300 West 15th Street, Suite 1300, Austin, Texas 78701, or to rules.review@dir.texas.gov. Comments will be accepted for 30 days after publication in the *Texas Register.*

SUBCHAPTER A. DEFINITIONS

1 TAC §202.1, §202.5

The amendments are proposed pursuant to Texas Government Code §2054.052(a), which authorizes the department to adopt rules as necessary to implement its responsibilities under Texas Government Code Chapter 2054; Texas Government Code §2054.0593(c) , which requires the department to adopt rules necessary to implement and administer the Texas Risk and Management Authorization Program; Senate Bill 271 [88th Legislative Session (Regular)], which orders local government compliance with all department rules relating to security incident reporting; and Texas Government Code §2054.515(c), which requires the department to establish the requirements for the information security assessment and report in its administrative rules.

No other code, article, or statute is affected by this proposal.

§202.1. Applicable Terms and Technologies for Information Security Standards.

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

(1) Access--The physical or logical capability to view, interact with, or otherwise make use of information resources.

(2) Agency Head--The top-most senior executive with operational accountability for an agency, department, commission, board, office, council, authority, or other agency in the executive or judicial

branch of state government, that is created by the constitution or a statute of the state; or institutions of higher education, as defined in Texas Education Code §61.003.

(3) Application--As defined in Texas Government Code §2054.003(1).

(4) Availability--The security objective of ensuring timely and reliable access to and use of information.

(5) Cloud Computing--Has the same meaning as "Advanced Internet-Based Computing Service" as defined in Texas Government Code §2157.007(a).

(6) Cloud Computing Service--The [~~the~~] meaning assigned by Special Publication 800-145 issued by the United States Department of Commerce National Institute of Standards and Technology[~~,~~] as the definition existed on January 1, 2015.

(7) Confidential Information--Information that must be protected from unauthorized disclosure or public release based on state or federal law or other legal agreement.

(8) Confidentiality--The security objective of preserving authorized restrictions on information access and disclosure, including means for protecting personal privacy and proprietary information.

(9) Control--A safeguard or countermeasure, including devices, policies, procedures, techniques, or other measures, that are prescribed to meet security requirements of an information system or organization to preserve. Controls may include security features, management constraints, personnel security, and security of physical structures, areas, and devices.

(10) Control Standards Catalog--The document that provides state agencies and higher education institutions state specific implementation guidance for alignment with the National Institute of Standards and Technology (NIST) SP (Special Publication) 800-53 security controls.

(11) Custodian--See information custodian.

(12) Department--The Department of Information Resources.

(13) Destruction--The result of actions taken to ensure that physical and digital media cannot be reused as originally intended and that information is technologically infeasible or prohibitively expensive to recover.

(14) Electronic Communication--A process used to convey a message or exchange information via electronic media. It includes the use of electronic mail (email), Internet access, Instant Messaging (IM), Short Message Service (SMS), facsimile transmission, and other paperless means of communication.

(15) Encryption (encrypt or encipher)--The conversion of plaintext information into a code or cipher text using a variable called a "key" and processing those items through a fixed algorithm to create the encrypted text that conceals the data's original meaning.

(16) FedRAMP--Federal Risk and Authorization Management Program.

(17) Guideline--Recommended, non-mandatory controls that help support standards or serve as a reference when no applicable standard is in place.

(18) High Impact Information Resources--Information Resources whose loss of confidentiality, integrity, or availability could be expected to have a severe or catastrophic adverse effect on organizational operations, organizational assets, or individuals. Such an event could:

(A) cause a severe degradation in or loss of mission capability to an extent and duration that the organization is not able to perform one or more of its primary functions;

(B) result in major damage to organizational assets;

(C) result in major financial loss; or

(D) result in severe or catastrophic harm to individuals involving loss of life or serious life-threatening injuries.

(19) Information--Any communication or representation of knowledge such as facts, data, or opinions in any medium or form, including textual, numerical, graphic, cartographic, narrative, electronic, or audiovisual forms.

(20) Information Custodian--A department, agency, or third-party service provider responsible for implementing the information owner-defined controls and access to an information resource.

(21) Information Owner(s)--A person(s) with statutory or operational authority for specified information and responsibility for establishing the controls for its generation, collection, processing, dissemination, and disposal.

(22) Information Resources--As defined in Texas Government Code §2054.003(7).

(23) Information Resources Manager--As defined in Texas Government Code §2054.071.

(24) Information Security Program--The policies, standards, procedures, elements, structure, strategies, objectives, plans, metrics, reports, services, and resources that establish an information resources security function within an institution of higher education or state agency.

(25) Information System--A discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information. An Information System normally includes, but is not limited to, hardware, software, network infrastructure, information, applications, communications, and people.

(26) Integrity--The security objective of guarding against improper information modification or destruction, including ensuring information non-repudiation and authenticity.

(27) ITCHE--Information Technology Council for Higher Education.

(28) Local Government - As defined by Texas Government Code §2054.003(9).

(29) [~~(28)~~] Low Impact Information Resources--Information resources whose loss of confidentiality, integrity, or availability could be expected to have a limited adverse effect on organizational operations, organizational assets, or individuals. Such an event could:

(A) cause a degradation in mission capability to an extent and duration that the organization is able to perform its primary functions, but the effectiveness of the functions is noticeably reduced;

(B) result in minor damage to organizational assets;

(C) result in minor financial loss; or

(D) result in minor harm to individuals.

(30) [~~(29)~~] Moderate Impact Information Resources--Information Resources whose loss of confidentiality, integrity, or

availability could be expected to have a serious adverse effect on organizational operations, organizational assets, or individuals. Such an event could:

(A) cause a significant degradation in mission capability to an extent and duration that the organization is able to perform its primary functions, but the effectiveness of the functions is significantly reduced;

(B) result in significant damage to organizational assets;

(C) result in significant financial loss; or

(D) result in significant harm to individuals that does not involve loss of life or serious life-threatening injuries.

(31) [~~(30)~~] Network Security Operations Center (NSOC)--As established by Texas Government Code §2059.101.

(32) [~~(31)~~] Nonconfidential Data--Information that is not required to be or may not be protected from unauthorized disclosure or public release based on state or federal law or other legal agreement.

(33) [~~(32)~~] Personal Identifying Information (PII)--A category of personal identity information as defined by Texas Business and Commerce Code §521.002(a)(1).

(34) [~~(33)~~] Procedure--Instructions to assist information security staff, custodians, and users in implementing policies, standards, and guidelines.

(35) [~~(34)~~] Program Manual--Program manual for the Texas risk and authorization management program.

(36) [~~(35)~~] Residual Risk--The risk that remains after security measures have been applied.

(37) [~~(36)~~] Risk--The effect on the entity's missions, functions, image, reputation, assets, or constituencies considering the probability that a threat will exploit a vulnerability, the safeguards already in place, and the resulting impact. Risk outcomes are a consequence of Impact levels defined in this section.

(38) [~~(37)~~] Risk Assessment--The process of identifying, evaluating, and documenting the probability and level of impact on an organization's mission, functions, image, reputation, assets, or individuals that may result from the operation of information systems. Risk Assessment incorporates threat and vulnerability analyses and considers mitigations provided by planned or in-place security controls.

(39) [~~(38)~~] Risk Management--The process of aligning information resources risk exposure with the organization's risk tolerance by either accepting, transferring, or mitigating risk exposures.

(40) [~~(39)~~] Security Assessment--The testing or evaluation of security controls to determine the extent to which the controls are implemented correctly, operating as intended, and producing the desired outcome with respect to meeting the security requirements for an information system or organization.

(41) [~~(40)~~] Security Incident--An incident that meets one of the requirements enumerated at Texas Government Code §2054.603(a)(1)(A) - (B). [~~An event that results in the accidental or deliberate unauthorized access, loss, disclosure, modification, disruption, exposure, or destruction of information or information resources.~~]

(42) [~~(41)~~] Sensitive Personal Information--A category of personal identity information as defined by Texas Business and Commerce Code §521.002(a)(2).

(43) [~~(42)~~] Standards--Specific mandatory controls that help enforce and support the information security policy.

(44) [~~(43)~~] State-controlled data--Any and all data that is created, processed, or stored by a state agency.

(45) [~~(44)~~] StateRAMP--The risk and authorization management program, built upon the National Institute of Standards and Technology Special Publication 800-53 and modeled after the FedRAMP program, that provides state and local governments a common method for verification of cloud security.

(46) [~~(45)~~] Statewide Technology Centers--As defined in Texas Government Code §2054.375(2).

(47) [~~(46)~~] Threat--Any circumstance or event with the potential to adversely impact organizational operations (including mission, functions, image, or reputation), organizational assets, or individuals by the unauthorized access, destruction, disclosure, modification of information, and/or denial of service.

(48) [~~(47)~~] TX-RAMP--the Texas Risk [~~risk~~] and Authorization [~~authorization~~] Management [~~management~~] Program [~~program~~].

(49) [~~(48)~~] User of Information Resources--An individual, process, or automated application authorized to access an information resource in accordance with federal and state law, agency policy, and the information-owner's procedures and rules.

(50) [~~(49)~~] Vulnerability Assessment--A documented evaluation containing information described in Texas Government Code §2054.077(b), which includes the susceptibility of a particular system to a specific attack.

§202.5. Texas Risk and Authorization Management Program Responsibilities and Mandatory Standards.

(a) Mandatory Standards for Cloud Computing Services Subject to the Texas Risk and Authorization Management Program.

(1) The department shall define mandatory standards for Texas cloud computing services identified by subsection (a) of this section in the program manual published on the department's website. Revisions to this document will be executed in compliance with subsection (d) of this section.

(2) The mandatory standards established by the department shall include at least the below stated baseline standards for:

(A) TX-RAMP Level 1 Baseline - This baseline is required for cloud computing services that are subject to TX-RAMP certification and categorized by a state agency as Low Impact Information Resources; and

(B) TX-RAMP Level 2 Baseline - This baseline is required for cloud computing services that are subject to TX-RAMP and categorized by a state agency as Moderate or High Impact Information Resources.

(3) The department shall establish the categories and characteristics of cloud computing services that are subject to TX-RAMP requirements in the program manual published on the department's website pursuant to subsection (a)(1).

(b) Responsibilities of Cloud Computing Service Vendors:

(1) To be certified under TX-RAMP, a cloud computing service vendor shall:

(A) Provide evidence of compliance with TX-RAMP requirements for the cloud computing service as detailed by the program manual; and

(B) Demonstrate continuous compliance in accordance with the program manual.

(2) Primary contracting vendors who provide or sell cloud computing services subject to TX-RAMP, including resellers who provide or sell these services, shall present evidence of certification of the cloud computing service being sold to the state agency or institution of higher education in accordance with the program manual. Such certification is required for all cloud computing services subject to TX-RAMP being provided through the contract or in furtherance of the contract, including services provided through subcontractors or third-party providers.

(3) Subcontractors or third-party providers responsible solely for servicing or supporting a cloud computing service provided by another vendor shall not be required to provide evidence of certification.

(c) Responsibilities of the Department:

(1) Prior to publishing new or revised program standards as required by subsections (a) - (b) of this section, the department shall:

(A) solicit comment through the department's electronic communications channels for the proposed standards to be changed from the Information Resources Managers and Information Security Officers of state agencies and institutions of higher education and ITCHE; and

(B) after reviewing the comments provided, present the proposed program manual to the department's Board and obtain approval from the Board for publication.

(2) The department shall:

(A) perform assessments to certify cloud computing services provided by cloud computing vendors; and

(B) publish on the department's website the list of cloud computing products certified under TX-RAMP.

(d) Acceptance of External Assessments.

(1) The department shall accept a vendor's compliance with FedRAMP and StateRAMP authorizations in satisfaction of the [above] baselines established by subsection (a) once the department receives evidence of compliance with these programs.

(2) At the department's discretion, another state's risk and authorization management program certification may be accepted in satisfaction of the [above] baselines established by subsection (a) once certification is demonstrated by the vendor in alignment with program manual standards.

(3) At the department's discretion, the department may allow a third-party security assessment or third-party audit to satisfy certain mandatory program standards. A vendor may demonstrate satisfaction of certain mandatory program standards by submitting a third-party security assessment or third-party audit that the department has authorized to align with and satisfy these standards.

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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Joshua Godbey
General Counsel
Department of Information Resources
Earliest possible date of adoption: October 8, 2023
For further information, please call: (512) 475-4552

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SUBCHAPTER B. INFORMATION SECURITY STANDARDS FOR STATE AGENCIES

1 TAC §202.23, §202.27

The amendments are proposed pursuant to Texas Government Code §2054.052(a), which authorizes the department to adopt rules as necessary to implement its responsibilities under Texas Government Code Chapter 2054; Texas Government Code §2054.0593(c) , which requires the department to adopt rules necessary to implement and administer the Texas Risk and Management Authorization Program; Senate Bill 271 [88th Legislative Session (Regular)], which orders local government compliance with all department rules relating to security incident reporting; and Texas Government Code §2054.515(c), which requires the department to establish the requirements for the information security assessment and report in its administrative rules.

No other code, article, or statute is affected by this proposal.

§202.23. Security Reporting.

(a) [~~Agency Reporting.~~] Each Information Security Officer shall directly report to the agency head, at least annually, on the adequacy and effectiveness of information security policies, procedures, practices, compliance with the requirements of this chapter, and:

(1) effectiveness of current information security program and status of key initiatives;

(2) residual risks identified by the state agency risk management process; and

(3) state agency information security requirements and requests.

(b) Each state agency shall submit to the department a Biennial Information Security Plan in accordance with Texas Government Code §2054.133.

[~~(b) Report to the Department.~~]

[~~(1) Urgent Incident Report.~~]

[~~(A) Each state agency shall assess the significance of a security incident based on the business impact on the affected resources and the current and potential technical effect of the incident (e.g., loss of revenue, productivity, access to services, reputation, unauthorized disclosure of confidential information, or propagation to other networks). Security incidents shall be promptly reported to immediate supervisors and the agency Information Security Officer. Confirmed or suspected security incidents shall be reported to the department within 48 hours of discovery in the form and manner specified by the department where the security incident is assessed to:~~]

~~*(i)* propagate to other state systems;~~

~~*(ii)* result in criminal violations that shall be reported to law enforcement in accordance with state or federal information security or privacy laws;~~

~~*(iii)* involve the unauthorized disclosure or modification of confidential information, e.g., sensitive personal information~~

as defined in Texas Business and Commerce Code §521.002(a)(2) and other applicable laws that may require public notification; or

(iv) be an unauthorized incident that compromises, destroys, or alters information systems, applications, or access to such systems or applications in any way.

[(B) If the security incident is assessed to involve suspected criminal activity (e.g., violations of Texas Penal Code Chapter 33 or Texas Penal Code Chapter 33A, the state agency shall contact law enforcement, as required, and the security incident shall be investigated, reported, and documented in accordance with the legal requirements for handling of evidence.]

[(C) Depending on the nature of the incident, it will not always be feasible to gather all the information prior to reporting. In such cases, incident response teams shall continue to report information to the department as it is collected. The department shall instruct state agencies as to the manner in which they shall report such information to the department. Supporting vendors or other third parties that report security incident information to an agency shall submit such reports to the agency in the form and manner specified by the department, unless otherwise directed by the agency. Agencies shall ensure that compliant reporting requirements are included in any contract where incident reporting may be necessary.]

[(2) Monthly Incident Report. Summary reports of security-related events shall be sent to the department on a monthly basis no later than nine (9) calendar days after the end of the month. State agencies shall submit summary security incident reports in the form and manner specified by the department. Supporting vendors or other third parties that report security incident information to a state agency shall submit such reports to the agency in the form and manner specified by the department, unless otherwise directed by the agency.]

[(3) Biennial Information Security Plan. Each state agency shall submit to the department a Biennial Information Security Plan in accordance with Texas Government Code §2054.133.]

(c) At least every two years, each state agency shall complete and submit an information security assessment in compliance with the requirements of Texas Government Code §2054.515 and this subsection.

(1) The agency's Biennial Information Security Plan may be considered to satisfy the information security assessment requirements of Texas Government Code §2054.515(a)(1) if the agency's Biennial Information Security Plan assesses:

(A) The security of the agency's information resources systems, network systems, and digital data storage systems;

(B) The measures in place to establish digital data security; and

(C) The vulnerabilities of the agency's information resources, including an evaluation determining how well the organization's security policies protect its data and information systems.

(2) To comply with Texas Government Code §2054.515(a)(2), a state agency must complete a data maturity assessment in alignment with the requirements established at 1 Texas Administrative Code §218.10.

(3) Upon completion of its information security assessment, a state agency shall report the results of its assessment to the department in the form and manner identified by the department. A state agency must comply with a request for the results of its assessment received from the Office of the Governor, Lieutenant Governor, or speaker of the House of Representatives.

(d) Each state agency shall assess the significance of a security incident based on the business impact on the affected resources and the current and potential technical effect of the incident (e.g., loss of revenue, productivity, access to services, reputation, unauthorized disclosure of confidential information, or propagation to other networks). Security incidents shall be promptly reported to immediate supervisors and the agency Information Security Officer.

(1) A state agency shall report security incidents to the department within 48 hours of discovery in the form and manner specified by the department where the security incident is assessed to:

(A) propagate to other state systems;

(B) result in criminal violations that shall be reported to law enforcement in accordance with state or federal information security or privacy laws;

(C) involve the unauthorized disclosure or modification of confidential information, e.g., sensitive personal information as defined in Texas Business and Commerce Code §521.002(a)(2) and other applicable laws that may require public notification; or

(D) be an unauthorized incident that compromises, destroys, or alters information systems, applications, or access to such systems or applications in any way.

(2) If the security incident is assessed to involve suspected criminal activity (e.g., violations of Texas Penal Code Chapter 33 or Texas Penal Code Chapter 33A), the state agency shall contact law enforcement, as required, and the security incident shall be investigated, reported, and documented in accordance with the legal requirements for handling of evidence.

(3) Depending on the nature of the incident, it will not always be feasible to gather all the information prior to reporting. In such cases, incident response teams shall continue to report information to the department as it is collected. The department shall instruct state agencies as to the manner in which they shall report such information to the department. Supporting vendors or other third parties that report security incident information to an agency shall submit such reports to the agency in the form and manner specified by the department, unless otherwise directed by the agency. Agencies shall ensure that compliant reporting requirements are included in any contract where incident reporting may be necessary.

(4) Ten days after the date of the eradication, closure, and recovery from a security incident, a state agency shall notify the department and the chief information security officer in the form and manner prescribed by the department of the security incident details and an analysis of the security incident cause.

(e) A local government shall report security incidents that are assessed by the entity to meet the criteria listed in subsection (d)(1) of this section to the department within 48 hours of discovery.

(1) A local government must submit its report of the security incident in the form and manner specified by the department.

(2) A local government is not required to report a security incident described by subsection (d) of this section where statute expressly states that compliance with the department reporting requirements is excluded for a security incident of that type.

(3) Ten days after the date of the eradication, closure, and recovery from a security incident, a local government shall notify the department and the chief information security officer in the form and manner prescribed by the department of the security incident details and an analysis of the security incident cause.

§202.27. Texas Risk and Authorization Management Program for State Agencies.

[(a) Mandatory Standards. Mandatory standards for Texas cloud computing services identified by subsection (b)(1) of this section shall be defined by the department in the program manual published on the department's website. Revisions to such document will be executed in compliance with subsection (d) of this section.]

[(b) Cloud Computing Standards Subject to the Texas Risk and Authorization Management Program. The standards required by subsection (a) of this section shall include the below stated baseline standards for:]

[(1) TX-RAMP Public Controls Baseline (TX-RAMP Level 1) - This baseline is required for cloud computing services that:]

[(A) store, process, or transmit nonconfidential data of a state agency; or]

[(B) host low impact information resources.]

[(2) TX-RAMP Confidential Controls Baseline (TX-RAMP Level 2) - This baseline is required for cloud computing services that:]

[(A) store, process, or transmit confidential data of a state agency; and]

[(B) host moderate impact information resources or high impact information resources.]

[(c) Responsibilities of Cloud Computing Service Vendors.]

[(1) To be certified under the TX-RAMP program, a cloud computing service vendor shall:]

[(A) Provide evidence of compliance for information they are storing, processing, or transmitting as detailed by the program manual; and]

[(B) Demonstrate continuous compliance in accordance with the program manual.]

[(2) Primary contracting vendors, including resellers, who provide or sell cloud computing services to state agencies shall present evidence of certification of the cloud computing service being sold in accordance with the program manual. Such certification is required for all cloud computing services being provided through the contract or in furtherance of the contract, including services provided through subcontractors or third-party providers.]

[(3) Subcontractors or third-party providers responsible solely for servicing or supporting a cloud computing service provided by another vendor shall not be required to provide evidence of certification.]

[(d) Responsibilities of the Department.]

(1) [Responsibilities of the Department in Developing Updates to the Program Manual. Prior to publishing new or revised program standards as required by subsections (a) - (d) of this section, the department shall:]

(A) [solicit comment through the department's electronic communications channels for proposed standards from the Information Resources Managers, ITCHE, and Information Security Officers of agencies and institutions of higher education at least 30 days prior to publication of proposed program manual; and

(B) [after reviewing comments provided during the comment period described by section (1)(A) of this subsection, present the proposed program manual to the department's Board and obtain approval from the Board for publication.]

(2) [Responsibilities of the Department for Certifying Vendor's Cloud Computing Products and Services. The department shall:]

(A) [perform reviews to certify cloud computing services provided by cloud computing vendors; and]

(B) [publish on the department's Internet website the list of cloud computing products certified under TX-RAMP.]

[(e) Responsibilities of a State Agency Contracting for Cloud Computing Services.] A state agency contracting for cloud computing services that store, process, or transmit data of the state agency shall:

(1) confirm that vendors contracting with the state agency to provide cloud computing services for the state agency are certified through TX-RAMP prior to entering or renewing a cloud computing services contract on or after January 1, 2022; and

(2) require a vendor contracting with the state agency to provide cloud computing services for the state agency that are subject to the state risk and authorization management program to maintain TX-RAMP compliance and certification throughout the term of the contract.

[(f) Acceptance of Other RAMP Certifications:]

[(1) FedRAMP and StateRAMP certifications shall be accepted in satisfaction of the above baselines once demonstrated by the vendor.]

[(2) At the department's discretion, another state's risk and authorization management program certification may be accepted in satisfaction of the above baselines once certification is demonstrated by the vendor in alignment with program manual standards.]

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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Joshua Godbey
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For further information, please call: (512) 475-4552

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SUBCHAPTER C. INFORMATION SECURITY STANDARDS FOR INSTITUTIONS OF HIGHER EDUCATION

1 TAC §202.73, §202.77

The amendments are proposed pursuant to Texas Government Code §2054.052(a), which authorizes the department to adopt rules as necessary to implement its responsibilities under Texas Government Code Chapter 2054; Texas Government Code §2054.0593(c) , which requires the department to adopt rules necessary to implement and administer the Texas Risk and Management Authorization Program; Senate Bill 271 [88th Legislative Session (Regular)], which orders local government compliance with all department rules relating to security incident reporting; and Texas Government Code §2054.515(c), which requires the department to establish the requirements for the information security assessment and report in its administrative rules.

No other code, article, or statute is affected by this proposal.

§202.73. Security Reporting.

(a) [~~Institution Reporting.~~] Each Information Security Officer shall directly report to the agency head, at least annually, on the adequacy and effectiveness of information security policies, procedures, practices, compliance with the requirements of this chapter, and:

(1) effectiveness of current information security program and status of key initiatives;

(2) residual risks identified by the institution of higher education risk management process; and

(3) institution of higher education information security requirements and requests.

(b) Each institution of higher education shall submit to the department a Biennial Information Security Plan in accordance with Texas Government Code §2054.133.

[~~(b) Report to the Department.~~]

[~~(1) [Urgent Incident Report.~~]

[~~(A) Each state institution of higher education shall assess the significance of a security incident based on the business impact on the affected resources and the current and potential technical effect of the incident (e.g., loss of revenue, productivity, access to services, reputation, unauthorized disclosure of confidential information, or propagation to other networks). Confirmed or suspected incidents shall be reported to immediate supervisors and the institution of higher education Information Security Officer. Confirmed or suspected security incidents shall be reported to the department within 48 hours of discovery in the form and manner specified by the department where the security incident is assessed to:~~]

[~~(i)~~ ~~propagate to other state systems;~~]

[~~(ii)~~ ~~result in criminal violations that shall be reported to law enforcement in accordance with state or federal information security or privacy laws;~~]

[~~(iii)~~ ~~involve the unauthorized disclosure or modification of confidential information, e.g., sensitive personal information as defined in Texas Business and Commerce Code §521.002(a)(2) and other applicable laws that may require public notification; or~~]

[~~(iv)~~ ~~be an unauthorized incident that compromises, destroys, or alters information systems, applications, or access to such systems or applications in any way.~~]

[~~(B) If the security incident is assessed to involve suspected criminal activity (e.g., violations of Texas Penal Code Chapters 33 or 33A, the institution of higher education shall contact law enforcement, as required, and the security incident shall be investigated, reported, and documented in accordance with the legal requirements for handling of evidence.~~]

[~~(C) Depending on the nature of the incident, it will not always be feasible to gather all the information prior to reporting. In such cases, incident response teams shall continue to report information to the department as it is collected. The department shall instruct state institutions of higher education as to the manner in which they shall report such information to the department. Supporting vendors or other third parties that report security incident information to an institution of higher education shall submit such reports to the institution of higher education in the form and manner specified by the department, unless otherwise directed by the institution of higher education. Institutions of higher education shall ensure that compliant reporting requirements are included in any contract where incident reporting may be necessary.~~]

[~~(2) Monthly Incident Report. Summary reports of security-related events shall be sent to the department on a monthly basis no later than nine (9) calendar days after the end of the month. Institutions of higher education shall submit summary security incident reports in the form and manner specified by the department. Supporting vendors or other third parties that report security incident information to an institution of higher education shall submit such reports to the institution of higher education in the form and manner specified by the department, unless otherwise directed by the institution of higher education.~~]

[~~(3) Biennial Information Security Plan. Each state institution of higher education shall submit to the department a biennial Information Security plan, in accordance with Texas Government Code §2054.133.~~]

(c) At least every two years, each institution of higher education shall complete and submit an information security assessment in compliance with the requirements of Texas Government Code §2054.515 and this subsection.

(1) The institution of higher education's Biennial Information Security Plan may be considered to satisfy the information security assessment requirements of Texas Government Code §2054.515(a)(1) if the institution's Biennial Information Security Plan assesses:

(A) The security of the institution's information resources systems, network systems, and digital data storage systems;

(B) The measures in place to establish digital data security; and

(C) The vulnerabilities of the institution's information resources, including an evaluation determining how well the organization's security policies protect its data and information systems.

(2) To comply with Texas Government Code §2054.515(a)(2), an institution of higher education must complete a data maturity assessment in alignment with the requirements established at 1 Texas Administrative Code §218.10.

(3) Upon completion of its information security assessment, an institution of higher education shall report the results of its assessment to the department in the form and manner identified by the department. An institution of higher education must comply with a request for the results of its assessment received from the Office of the Governor, Lieutenant Governor, or speaker of the House of Representatives.

(d) Each state institution of higher education shall assess the significance of a security incident based on the business impact on the affected resources and the current and potential technical effect of the incident (e.g., loss of revenue, productivity, access to services, reputation, unauthorized disclosure of confidential information, or propagation to other networks). Confirmed or suspected incidents shall be reported to immediate supervisors and the institution of higher education Information Security Officer.

(1) An institution of higher education shall report security incidents to the department within 48 hours of discovery in the form and manner specified by the department where the security incident is assessed to:

(A) propagate to other state systems;

(B) result in criminal violations that shall be reported to law enforcement in accordance with state or federal information security or privacy laws;

(C) involve the unauthorized disclosure or modification of confidential information, e.g., sensitive personal information as de-

fined in Texas Business and Commerce Code §521.002(a)(2) and other applicable laws that may require public notification; or

(D) be an unauthorized incident that compromises, destroys, or alters information systems, applications, or access to such systems or applications in any way.

(2) If the security incident is assessed to involve suspected criminal activity (e.g., violations of Texas Penal Code Chapters 33 or 33A, the institution of higher education shall contact law enforcement, as required, and the security incident shall be investigated, reported, and documented in accordance with the legal requirements for handling of evidence.

(3) Depending on the nature of the incident, it will not always be feasible to gather all the information prior to reporting. In such cases, incident response teams shall continue to report information to the department as it is collected. The department shall instruct state institutions of higher education as to the manner in which they shall report such information to the department. Supporting vendors or other third parties that report security incident information to an institution of higher education shall submit such reports to the institution of higher education in the form and manner specified by the department, unless otherwise directed by the institution of higher education. Institutions of higher education shall ensure that compliant reporting requirements are included in any contract where incident reporting may be necessary.

(4) Ten days after the date of the eradication, closure, and recovery from a security incident, an institution of higher education shall notify the department and the chief information security officer in the form and manner prescribed by the department of the security incident details and an analysis of the security incident cause.

§202.77. Texas Risk and Authorization Management Program for Institutions of Higher Education.

~~[(a) Mandatory Standards. Mandatory standards for Texas cloud computing services identified by subsection (b)(1) of this section shall be defined by the department in the program manual published on the department's website. Revisions to such document will be executed in compliance with subsection (d) of this section.]~~

~~[(b) Cloud Computing Standards Subject to the Texas Risk and Authorization Management Program. The standards required by subsection (a) of this section shall include the below stated baseline standards for:]~~

~~[(1) TX-RAMP Public Controls Baseline (TX-RAMP Level 1) - This baseline is required for cloud computing services that:]~~

~~[(A) store, process, or transmit nonconfidential data of an institution of higher education; or]~~

~~[(B) host low impact information resources.]~~

~~[(2) TX-RAMP Confidential Controls Baseline (TX-RAMP Level 2) - This baseline is required for cloud computing services that:]~~

~~[(A) store, process, or transmit confidential data of an institution of higher education; and]~~

~~[(B) host moderate impact information resources or high impact information resources.]~~

~~[(c) Responsibilities of Cloud Computing Service Vendors.]~~

~~[(1) To be certified under the TX-RAMP program, a cloud computing service vendor shall:]~~

~~[(A) Provide evidence of compliance for information they are storing, processing, or transmitting as detailed by the program manual; and]~~

~~[(B) Demonstrate continuous compliance in accordance with the program manual.]~~

~~[(2) Primary contracting vendors, including resellers, who provide or sell cloud computing services to institutions of higher education shall present evidence of certification of the cloud computing service being sold in accordance with the program manual. Such certification is required for all cloud computing services being provided through the contract or in furtherance of the contract, including services provided through subcontractors or third-party providers.]~~

~~[(3) Subcontractors or third-party providers responsible solely for servicing or supporting a cloud computing service provided by another vendor shall not be required to provide evidence of certification.]~~

~~[(d) Responsibilities of the Department in Developing Updates to the Program Manual. Prior to publishing new or revised program standards as required by subsections (a) - (d) of this section, the department shall:]~~

~~[(1) solicit comment through the department's electronic communications channels for proposed standards from the Information Resources Managers, ITCHE, and Information Security Officers of agencies and institutions of higher education at least 30 days prior to publication of proposed program manual; and]~~

~~[(2) after reviewing comments provided during the comment period described by paragraph (1) of this subsection, present the proposed program manual to the department's Board and obtain approval from the Board for publication.]~~

~~[(e) Responsibilities of an Institution of Higher Education Contracting for Cloud Computing Services.]~~ An institution of higher education contracting for cloud computing services that store, process, or transmit data of the institution of higher education shall:

(1) confirm that vendors contracting with the institution of higher education to provide cloud computing services for the institution of higher education are certified through TX-RAMP prior to entering or renewing a cloud computing services contract on or after January 1, 2022; and

(2) require a vendor contracting with the institution of higher education to provide cloud computing services for the institution of higher education that are subject to the state risk and authorization management program to maintain program compliance and certification throughout the term of the contract.

~~[(f) Acceptance of Other RAMP Certifications.]~~

~~[(1) FedRAMP and StateRAMP certifications shall be accepted in satisfaction of the above baselines once demonstrated by the vendor.]~~

~~[(2) At the department's discretion, another state's risk and authorization management program certification may be accepted in satisfaction of the above baselines once certification is demonstrated by the vendor in alignment with program manual requirements.]~~

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

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Joshua Godbey
General Counsel
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CHAPTER 218. DATA GOVERNANCE AND MANAGEMENT

The Texas Department of Information Resources (department) proposes the creation of 1 Texas Administrative Code (TAC) Chapter 218, Subchapter A, §§218.1 - 218.3, Subchapter B, §218.10, and Subchapter C, §218.20. This proposed chapter addresses the requirements for a state agency as defined by Texas Government Code Chapter 2054 to conduct an information security assessment of the agency's data governance program.

Within Subchapter A, the department proposes the creation §§218.1 - 218.3. Section 218.1 introduces any specialized definitions required by the rule, which includes the terms "data governance program," "data management officer," and "data maturity assessement." Section 218.2 defines the term state agency. Section 218.3 defines the term institution of higher education.

The department proposes the creation of subchapter B, §218.20, for state agencies, and subchapter C, §218.30, for institutions of higher education. These sections establish the minimum requirements that an entity's information security assessment of its data governance program as required by Texas Government Code § 2054.515(a)(2) must meet to be considered compliant with the statutory requirement. In §218.30, the department also proposes the clarification that the data maturity assessment is considered a statutory component of the information security assessment, which is information security standard, and, as such, public junior colleges must comply with this requirement subject to Texas Government Code § 2054.0075.

There is no economic impact on rural communities or small businesses as a result of enforcing or administering the new rules as proposed.

The new rules in this chapter apply only to state agencies and institutions of higher education.

The assessment of the impact of the proposed changes on institutions of higher education was prepared in consultation with the Information Technology Council for Higher Education (ITCHE) in compliance with Texas Government Code § 2054.121(c). DIR submitted the proposal to the Information Technology Council of Higher Education for their review. DIR determined that there was no direct impact on institutions of higher education as a result of the proposed rules.

Neil Cooke, the Chief Data Officer, has determined that there will be no fiscal impact upon state agencies, institutions of higher education, and local governments during the first five year period following the adoption of the proposed new rules. State agencies are required by Texas Government Code § 2054.515(a) to complete a biennial information security assessment of, among other elements, its data governance program; the proposed rules simply establish the minimum necessary components of this data maturity assessment. This allows for a rigorous data maturity assessment that still permits any entity-specific customizability and scaling to address its unique data governance program. As such, the proposed chapter does not result in a fiscal impact to state agencies, institutions of higher education, or local governments. Mr. Cooke has further determined that for each year of the first five years following the adoption of the new 1 TAC Chapter 218, there are no anticipated additional economic costs to persons or small businesses required to comply with the proposed new rules.

Pursuant to Texas Government Code § 2001.0221, the agency provides the following Governmental Growth Impact Statement for the proposed new rules. The agency has determined the following:

The proposed rules neither create nor eliminate a government program. Texas Government Code § 2054.515(a)(2) requires state agencies complete the information security assessment and report, including the data maturity assessment. The proposed rules merely administer the minimum requirements for this assessment.

Implementation of the proposed rules does not require the creation or elimination of employee positions. There are no additional employees required nor employees eliminated to implement the rule as proposed.

Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency. There is no fiscal impact as implementing the rule does not require an increase or decrease in future legislative appropriations.

The proposed rules do not require an increase or decrease in fees paid to the agency.

The proposed rules create a new rule chapter that clarifies the minimum requirements for the state agency data maturity assessment mandated by Texas Government Code § 2054.515(a)(2). The department previously addressed items referential to the data maturity assessment in 1 Texas Administrative Code Chapter 202; the department proposes this new chapter in alignment with the rulemaking authority granted by Texas Government Code § 2054.515 to streamline the information security assessment process and alleviate confusion regarding data maturity assessment requirements.

The proposed rules do not repeal an existing regulation.

The proposed rules do not increase or decrease the number of individuals subject to the rule's applicability. Texas Government Code § 2054.515 requires state agencies to complete the information security assessment, which includes the data maturity assessment; Texas Government Code Chapter 2054 establishes the parameters of the term "state agency," which identifies the entities that are subject to this chapter's requirements. Public junior colleges are not excepted from information security standards established by the department. Tex. Gov't Code § 2054.0075. These information security standards are established, among other places, in 1 TAC Chapter 202. To the extent that the data security maturity assessment is a statutory component of the information security assessment and the information security assessment requirements reside in 1 TAC Chapter 202, public junior colleges are subject to this requirement.

The proposed rules do not positively or adversely affect the state's economy. The creation of rules establishing minimum requirements for an entity's data maturity assessment ensures that state agencies are scrutinizing their data governance pro-

gram to ensure rigorous security standards and alignment with best practices.

Written comments on the proposed rules may be submitted to Christi Koenig Brisky, Assistant General Counsel, 300 West 15th Street, Suite 1300, Austin, Texas 78701, or to rules.review@dir.texas.gov. Comments will be accepted for 30 days after publication in the *Texas Register.*

SUBCHAPTER A. DEFINITIONS

1 TAC §§218.1 - 218.3

The new rules are proposed pursuant to Texas Government Code § 2054.052(a), which authorizes the department to adopt rules as necessary to implement its responsibilities under Texas Government Code Chapter 2054, and Texas Government Code § 2054.515(a)(2), which admonishes the department to establish the data maturity assessment requirements by rule.

No other code, article, or statute is affected by this proposal.

§218.1. Definitions.

(a) Data Governance Program - the program established pursuant to the requirements of Texas Government Code § 2054.137(b)(2).

(b) Data Management Officer - the full-time employee designated by the state agency or institution of higher education to fulfill the statutory duties required by Texas Government Code § 2054.137(b). A state agency or institution of higher education is only required to designate such an employee to the extent that it meets the statutory requirement to do so.

(c) Data Maturity Assessment - the assessment of an agency's data governance program required by Texas Government Code § 2054.137(b)(2) that is conducted by the designated data management officer.

§218.2. State Agency.

A department, commission, board, office, council, authority, or other agency in the executive or judicial branch of state government, other than an institution of higher education, that is created by the constitution or a statute of this state.

§218.3. Institution of Higher Education.

A university system or institution of higher education as defined by Texas Education Code § 61.003.

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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Joshua Godbey
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SUBCHAPTER B. DATA GOVERNANCE AND MANAGEMENT FOR STATE AGENCIES

1 TAC §218.10

The new rule is proposed pursuant to Texas Government Code § 2054.052(a), which authorizes the department to adopt rules as necessary to implement its responsibilities under Texas Government Code Chapter 2054, and Texas Government Code § 2054.515(a)(2), which admonishes the department to establish the data maturity assessment requirements by rule.

No other code, article, or statute is affected by this proposal.

§218.10. Data Maturity Assessment.

(a) A state agency shall conduct a data maturity assessment by November 15 of each even-numbered year, December 1 of the year in which the agency completes the assessment, or the 60th day after the agency completes the assessment, whichever comes first.

(b) The data maturity assessment shall include at least the below elements:

(1) Data Architecture;

(2) Data Analytics;

(3) Data Governance and Standardization;

(4) Data Management and Methodology;

(5) Data Program Management and Change Control;

(6) Data Quality;

(7) Data Security and Privacy;

(8) Data Strategy and Roadmap;

(9) Master Data Management; and

(10) Metadata Management.

(c) State agencies may complete their data maturity assessment through a method identified by the department or by using their own tool that includes the elements required by subsection (b) of this section.

(d) The data maturity assessment completed pursuant to this subsection addresses the requirement to review an agency's data governance program found in Texas Government Code § 2054.515(a)(2).

(e) To comply with Texas Government Code § 2054.515(a), a state agency must complete a data maturity assessment that is compliant with this section in addition to addressing all information security assessment requirements enumerated in 1 Texas Administrative Code Chapter 202.

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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Joshua Godbey
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Department of Information Resources
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SUBCHAPTER C. DATA GOVERNANCE AND MANAGEMENT FOR INSTITUTIONS OF HIGHER EDUCATION

1 TAC §218.20

The amendments are proposed pursuant to Texas Government Code § 2054.052(a), which authorizes the department to adopt rules as necessary to implement its responsibilities under Texas Government Code Chapter 2054, and Texas Government Code § 2054.515(a)(2), which admonishes the department to establish the data maturity assessment requirements by rule.

No other code, article, or statute is affected by this proposal.

§218.20. Data Maturity Assessment.

(a) An institution of higher education shall conduct a data maturity assessment by November 15 of each even-numbered year, December 1 of the year in which the institution of higher education completes the assessment, or the 60th day after the institution of higher education completes the assessment, whichever comes first.

(b) An institution of higher education's data maturity assessment shall include at least the below elements:

(1) Data Architecture;

(2) Data Analytics;

(3) Data Governance and Standardization;

(4) Data Management and Methodology;

(5) Data Program Management and Change Control;

(6) Data Quality;

(7) Data Security and Privacy;

(8) Data Strategy and Roadmap;

(9) Master Data Management; and

(10) Metadata Management.

(c) Institutions of higher education may complete their data maturity assessment through a method identified by the department or by using their own tool that includes the elements required by subsection (b) of this section.

(d) The data maturity assessment completed pursuant to this subsection addresses the requirement to review an institution of higher education's data governance program found at Texas Government Code § 2054.515(a)(2).

(e) To comply with Texas Government Code § 2054.515(a), an institution of higher education must complete a data maturity assessment that is compliant with this section in addition to addressing all information security assessment requirements enumerated in 1 Texas Administrative Code Chapter 202.

(f) To the extent that the data maturity assessment is an element of the information security assessment required by Texas Government Code § 2054.515 and codified at 1 Texas Administrative Code Chapter 202, it is an information security standard to which a public junior college is subject pursuant to Texas Government Code § 2054.0075.

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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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 353. MEDICAID MANAGED CARE SUBCHAPTER E. STANDARDS FOR MEDICAID MANAGED CARE

1 TAC §353.425, §353.427

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §353.425, concerning MCO Processing of Prior Authorization Requests Received with Incomplete or Insufficient Documentation; and §353.427, concerning Accessibility of Information Regarding Medicaid Prior Authorization Requirements in Title 1, Part 15, Chapter 353, Subchapter E, Standards for Medicaid Managed Care.

BACKGROUND AND PURPOSE

The purpose of the proposal is to comply with Texas Government Code §533.00282, §533.00284, §533.002841, and §531.024163 added by Senate Bill 1207, 86th Legislature, Regular Session, 2019. These sections of the Government Code require HHSC to establish a uniform process and timeline for a prior authorization (PA) request submitted with incomplete or insufficient information or documentation and require Medicaid managed care organizations (MCOs) to improve website accessibility of information related to PA requirements.

SECTION-BY-SECTION SUMMARY

Proposed new §353.425 describes a uniform timeline and process for an MCO to use when reviewing a PA request submitted with incomplete or insufficient documentation for a member who is not hospitalized at the time of the request. The proposed rule defines "incomplete prior authorization request" and describes a standard process for MCOs to allow a provider to submit missing information and documentation necessary to establish medical necessity as listed in the PA requirements on the MCO's website. The proposed rule sets forth requirements for MCOs to communicate with providers and Medicaid members regarding incomplete or insufficient information or documentation, offers an opportunity for a peer-to-peer physician consultation, and creates a standard timeline for making a final determination on a PA request.

Proposed new §353.427 requires an MCO to maintain on its website in an easily searchable and accessible format the items listed in the proposed rule. Specifically, the items listed in the rule are applicable timelines for prior authorization requirements, an accurate and up-to-date catalogue of coverage criteria and prior authorization requirements, and the process and contact information for a provider or member to contact the MCO for the reasons described in the proposed rule. The proposed rule also defines what "accessible" means when used in the section.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

(1) the proposed rules will not create or eliminate a government program;

(2) implementation of the proposed rules will not affect the number of HHSC employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will not affect fees paid to HHSC;

(5) the proposed rules will create new rules;

(6) the proposed rules will not expand, limit, or repeal an existing rule;

(7) the proposed rules will not change the number of individuals subject to the rule; and

(8) the proposed rules will not affect the state's economy.

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the rules apply to MCOs, and there are no MCOs that are small businesses, micro-businesses, or rural communities.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Emily Zalkovsky, State Medicaid Director, has determined that for each year of the first five years the rules are in effect, the public benefit will be increased transparency, appropriate utilization, and improved health care outcomes for Medicaid members by reducing unnecessary denials and delays in processing of PA requests under the Medicaid managed care program.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to MCOs that are required to comply with the proposed rules because the MCOs have incorporated the proposed process into their PA processes and have made that information easily searchable and accessible on their websites.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751, or emailed to *HHSRulesCoordinationOffice@hhs.texas.gov.*

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R083" in the subject line.

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §32.021(a) and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas. The new sections are also authorized by Texas Government Code §533.00282, §533.00284, §533.002841 and §531.024163.

The new sections affect Texas Government Code Chapters 531 and 533 and Texas Human Resources Code Chapter 32.

§353.425. MCO Processing of Prior Authorization Requests Received with Incomplete or Insufficient Documentation.

(a) The rules in this section apply when a prior authorization (PA) request is submitted with incomplete or insufficient information or documentation on behalf of a member who is not hospitalized at the time of the request.

(b) In this section, "incomplete PA request" means a request for service that is missing information or documentation necessary to establish medical necessity as listed in the PA requirements on the managed care organization's (MCO's) website.

(c) An MCO must comply with Title 42 Code of Federal Regulations §438.210, Texas Insurance Code Chapter 4201, applicable provisions of Texas Government Code Chapter 533, and the PA process and timeline requirements included in an MCO's contract with the Texas Health and Human Services Commission (HHSC).

(d) If an MCO or an entity reviewing a request on behalf of an MCO receives a PA request with incomplete or insufficient information or documentation, the MCO or reviewing entity must comply with the following HHSC requirements.

(1) An MCO reviewing the request must notify the requesting provider and the member, in writing, of the missing information no later than three business days after the MCO receives an incomplete PA request.

(2) If an MCO does not receive the information requested within three business days after the MCO notifies the requesting provider and the PA request will result in an adverse benefit determination, the MCO must refer the PA request to the MCO medical director for review.

(3) The MCO must offer to the requesting physician an opportunity for a peer-to-peer consultation with a physician no less than one business day before the MCO issues an adverse benefit determination.

(4) The MCO must make a final determination as expeditiously as the member's condition requires but no later than three days after the date the missing information is provided to an MCO.

(e) The HHSC requirements for MCO reconsideration of an incomplete PA request do not affect any related timeline for:

(1) an MCO's internal appeal process;

(2) a Medicaid state fair hearing;

(3) a review conducted by an external medical reviewer; or

(4) any rights of a member to appeal a determination on a PA request.

§353.427. Accessibility of Information Regarding Medicaid Prior Authorization Requirements.

(a) In this section, "accessible" means publicly available and capable of being found and read without impediment. Usernames and passwords cannot be required to view the information.

(b) A managed care organization (MCO) must maintain on its public-facing website the MCO's criteria and policy for prior authorizations and website links to any prior authorization request forms the provider uses.

(c) The MCO must maintain the following items on its website in an easily searchable and accessible format.

(1) Applicable timelines for prior authorization requirements, including:

(A) the timeframe in which the MCO must make a determination on a prior authorization request;

(B) a description of the notice the MCO provides to a provider or member regarding the documentation required to complete a prior authorization determination; and

(C) the deadline by which the MCO must submit the notice described in subparagraph (B) of this paragraph.

(2) An accurate and up-to-date catalogue of coverage criteria and prior authorization requirements, including:

(A) the effective date of a prior authorization requirement, if the requirement is first imposed on or after September 1, 2019;

(B) a list or description of any supporting or supplemental documentation necessary to obtain prior authorization for a specified service; and

(C) the date and results of each annual review of the MCO's prior authorization requirements as required by Texas Government Code §533.00283(a).

(3) The process and contact information for a provider or member to contact the MCO to:

(A) clarify prior authorization requirements; and

(B) obtain assistance in submitting a prior authorization request.

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 21, 2023.

TRD-202303081
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: October 8, 2023
For further information, please call: (512) 438-4395

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CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER O. ELECTRONIC VISIT VERIFICATION

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §354.4001, concerning Purpose and Authority; and §354.4003, concerning Definitions; the repeal of §354.4005, concerning Applicability; §354.4007, concerning EVV System; §354.4009, concerning Requirements for Claims Submission and Approval; §354.4011, concerning Member Rights and Responsibilities; and §354.4013, concerning Additional Requirements; and new §354.4005, concerning Personal Care Services that Require the Use of EVV; §354.4006, concerning Home Health Care Services that Require the Use of EVV; §354.4007, concerning EVV System; §354.4009, concerning EVV Visit Transaction and EVV Claim; §354.4011, concerning Visit Maintenance; §354.4013, concerning HHSC and MCO Compliance Reviews and Enforcement Actions; §354.4015, concerning EVV Training Requirements; §354.4017, concerning Process to Request Approval of a Proposed EVV Proprietary System and Additional Requirements for a PSO; §354.4019, concerning Access to EVV System and EVV Documentation; §354.4021, concerning Additional Requirements; §354.4023, concerning Sanctions; and §354.4025, concerning Administrative Hearing.

BACKGROUND AND PURPOSE

In accordance with Section 1903(l) of the Social Security Act (42 U.S.C. §1396b(l)), HHSC requires that electronic visit verification (EVV) be used to document the provision of certain personal care services provided through Medicaid. One purpose of the proposed rules is to ensure that HHSC complies with the requirement in Section 1903(l) that EVV be used to document the provision of Medicaid home health care services. Although Section 1903(l) requires the use of EVV for Medicaid home health services to have begun January 1, 2023, the Centers for Medicare & Medicaid Services granted HHSC an extension allowing HHSC to implement this requirement by January 1, 2024.

Another purpose of the proposed rules is to codify in rules current policies and procedures related to EVV including training requirements, visit maintenance requirements, compliance reviews, and the process for HHSC to recognize a health care provider's proprietary EVV system as described in Texas Government Code §531.024172(g).

The proposed rules repeal several rules and replace them with new rules.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §354.4001, Purpose and Authority, makes minor editorial changes to terminology, deletes language for brevity and clarity, and corrects a statutory reference.

The proposed amendment to §354.4003, Definitions, reformats some of the defined terms and makes edits to some of the definitions for clarity. In addition, the proposed amendment adds definitions for the following new terms: EVV claim; EVV portal; EVV portal user; EVV system user; home health aide; ICF/IID--intermediate care facility for individuals with an intellectual disability or related conditions; IMD--institution for mental diseases; LVN--licensed vocational nurse; nursing facility; occupational therapist; PCS--personal care services; PDN--private duty nursing; physical therapist; PSO--proprietary system operator; RN--registered nurse; vendor hold; and visit maintenance.

Proposed new §354.4005, Personal Care Services that Require the Use of EVV, requires a program provider to ensure that a service provider uses EVV to document the provision of certain specified personal care services by the program provider. The new section also requires a consumer directed services (CDS) employer to ensure that a service provider uses EVV to document the provision of certain specified personal care services through the CDS option. One of the specified services in this section is in-home individualized skills and socialization, which replaces day habilitation provided in a member's residence.

The proposed repeal of §354.4005, Applicability, deletes the rule because it is no longer necessary, and replaces it with proposed new §354.4005, Personal Care Services that Require the Use of EVV.

Proposed new §354.4006, Home Health Care Services that Require the Use of EVV, requires a program provider to ensure that a service provider uses EVV to document the provision of certain specified home health care services by the program provider on or after January 1, 2024. The new section also requires a CDS employer to ensure that a service provider uses EVV to document the provision of certain specified home health care services using the CDS option on or after January 1, 2024.

Proposed new §354.4007, EVV System, provides that a program provider or a financial management services agency (FMSA) must use either an EVV vendor system or EVV proprietary system to document the provision of a service and requires a CDS employer to use the EVV system selected by their FMSA. The proposed new rule requires that, except as provided in subsection (d), a program provider, an FMSA, and a CDS employer ensure that a service provider uses an EVV system to electronically document the provision of a service described in proposed new §354.4005 or §354.4006. The proposed new rule describes the action a program provider, FMSA or a CDS employer must take if a service provider fails to use an EVV system to document the provision of a service described in proposed new §354.4005 or §354.4006 or if a service provider cannot use an EVV system because the EVV system is unavailable. The proposed new rule provides that HHSC may take certain actions if a program provider or an FMSA does not comply with subsections (a), (c), or (d) of this section. The proposed new rule also provides that HHSC or managed care organization (MCO) may take certain actions if a CDS employer does not comply with subsections (b), (c), or (d) of this section.

The proposed repeal of §354.4007, EVV System deletes the rule because it is no longer necessary, and replaces it with proposed new §354.4007, EVV System.

Proposed new §354.4009, EVV Visit Transaction and EVV Claim, requires a program provider and an FMSA to ensure that an EVV visit transaction contains certain specified data elements required by the EVV system and that the data elements are accurate. The proposed new rule also includes a similar requirement for a CDS employer who elects to complete visit maintenance on the HHSC Employer's Selection for Electronic Visit Verification Responsibilities form. The proposed new rule requires a program provider and an FMSA to make certain assurances before submitting an EVV claim including that the EVV visit transaction is transmitted to and accepted by the EVV Portal, and to submit the EVV claim in accordance with HHSC or MCO billing requirements and the EVV Policy Handbook. Further, the proposed new rule provides that HHSC or an MCO denies an EVV claim or recoups a payment made to a program provider or an FMSA if the EVV claim does not meet requirements described in the EVV Policy Handbook.

The proposed repeal of §354.4009, Requirements for Claims Submission and Approval deletes the rule because it is no longer necessary, and replaces it with proposed new §354.4009, EVV Visit Transaction and EVV Claim.

Proposed new §354.4011, Visit Maintenance, requires a program provider and an FMSA to complete visit maintenance in accordance with the EVV Policy Handbook. The proposed new rule also includes a similar requirement for a CDS employer who elects to complete visit maintenance on the HHSC Employer's Selection for Electronic Visit Verification Responsibilities form. In addition, the proposed new rule allows the program provider, FMSA, and CDS employer to complete visit maintenance after the visit maintenance time frame has expired only if the program provider, FMSA, or CDS employer submits a Visit Maintenance Unlock Request in accordance with the EVV Policy Handbook and HHSC or an MCO approves the Visit Maintenance Unlock Request.

The proposed repeal §354.4011, Member Rights and Responsibilities deletes the rule because it is no longer necessary, and replaces it with proposed new §354.4011, Visit Maintenance.

Proposed new §354.4013, HHSC and MCO Compliance Reviews and Enforcement Actions, describes the types of compliance reviews conducted by HHSC and an MCO of a program provider, FMSA, and CDS employer and the circumstances under which certain action may be taken based on a review, including recoupment of payment, imposition of a vendor hold, or termination of a member's participation in the CDS option.

The proposed repeal §354.4013, Additional Requirements deletes the rule because it is no longer necessary, and replaces it with proposed new §354.4013, HHSC and MCO Compliance Reviews and Enforcement Actions.

Proposed new §354.4015, EVV Training Requirements, describes the requirements for a program provider, an FMSA, and a proprietary system operator (PSO) regarding EVV System Training, EVV Policy Training, and EVV Portal Training; the requirements for a CDS employer regarding EVV System Training and EVV Policy Training; and the requirements for a program provider and CDS employer on training a service provider on the clock in and clock out portion of the EVV System Training. In addition, the proposed new rule describes the documentation requirements to demonstrate compliance with the training requirements and the actions that may be taken by HHSC, an MCO, or an FMSA if a program provider, FMSA, PSO, or CDS employer does not comply with the training requirements.

Proposed new §354.4017, Process to Request Approval of a Proposed EVV Proprietary System and Additional Requirements for a PSO, describes the process by which a program provider or FMSA seeks HHSC's approval of a proposed proprietary sys-

tem and the basis on which HHSC approves a proposed proprietary system. In addition, the proposed new rule describes the requirements of a PSO, allows HHSC to conduct an audit of a proprietary system, and describes the actions HHSC may take if a PSO is not in compliance with the requirements in the proposed rule.

Proposed new §354.4019, Access to EVV System and EVV Documentation, requires a program provider and an FMSA to allow HHSC and the MCO with which the program provider or FMSA has a contract access to the EVV system the program provider or FMSA uses and to allow HHSC and the MCO to review EVV system documentation or obtain a copy of that documentation at no charge to HHSC or the MCO.

Proposed new §354.4021, Additional Requirements, requires a program provider, FMSA, CDS employer, service provider, member, and MCO to comply with applicable state and federal laws, rules, regulations, and the EVV Policy Handbook.

Proposed new §354.4023, Sanctions, provides that HHSC or an MCO may propose to recoup funds, impose a vendor hold, or propose to terminate the contract of a program provider or FMSA as described in proposed §354.4007, §354.4009, and §354.4013.

Proposed new §354.4025, Administrative Hearing, provides that a program provider or FMSA may request an administrative hearing in accordance with 26 TAC §357.484, Request for a Hearing, to appeal a proposed contract termination or recoupment or imposition of a vendor hold by HHSC and may appeal a proposed contract termination or recoupment or imposition of a vendor hold by an MCO in accordance with the MCO's policy.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, there will be an estimated additional cost to state government as a result of enforcing and administering the rules as proposed. Enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of local government.

The effect on state government for each year of the first five years the proposed rule(s) are in effect is an estimated cost of $475,938 in Federal Funds (FF) ($544,438 All Funds (AF)) in fiscal year (FY) 2022, $836,286 in FF ($951,598 AF) in FY 2023, $1,136,250 in FF ($1,515,000 AF) in FY 2024, $1,136,250 in FF ($1,515,000 AF) in FY 2025, and $1,136,250 in FF ($1,515,000 AF) in FY 2026.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rule(s) will be in effect:

(1) the proposed rules will not create or eliminate a government program;

(2) implementation of the proposed rules will not affect the number of HHSC employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will not affect fees paid to HHSC;

(5) the proposed rules will create a new rule;

(6) the proposed rules will expand and repeal existing rules;

(7) the proposed rules will increase the number of individuals subject to the rules; and

(8) the proposed rules will not affect the state's economy.

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

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

HHSC is unable to estimate the number of small businesses and micro-businesses subject to the proposed rules; no rural communities are EVV providers. The entities subject to the proposed rules are program providers; CDS employers; FMSAs; service providers; Medicaid recipients; and MCOs. The projected economic impact for a small or micro business is the cost to comply with the proposed rules.

The proposed rules implement the requirements of federal statute and failure to comply will result in reduced federal Medicaid funding, therefore no alternative methods were considered.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to receive a source of federal funds or comply with federal law.

PUBLIC BENEFIT AND COSTS

Emily Zalkovsky, State Medicaid Director, has determined that for each year of the first five years the rules are in effect, the public benefit is that the provision of Medicaid home health care services will be documented by EVV in compliance with Section 1903(l) of the Social Security Act. Another public benefit is the clear identification of programs and services for which the use of EVV is required.

Trey Wood has also determined that for the first five years the rules are in effect, MCOs, program providers, FMSAs, and CDS employers who are required to comply with the proposed rules may incur economic costs. However, HHSC is unable to estimate the cost for individuals required to comply with the proposed rules.

An MCO may have additional costs: to ensure new MCO program providers subject to these proposed rules are in compliance with the EVV requirements; to provide notice to new members of the requirement for the member and service provider to use EVV; and to educate any new members about EVV.

A program provider not using EVV prior to the effective date of the proposed rules may have additional costs: to implement the use of the EVV system; to purchase and manage EVV equipment such as alternative devices; to purchase mobile devices for service providers; to use the mobile application on a mobile device; to train service providers on the use of the EVV system; to monitor and verify the service provider's service delivery using EVV; and to ensure all data elements required by HHSC are uploaded or entered completely and accurately into the EVV system before billing for the delivered services.

An FMSA not using EVV prior to the effective date of the proposed rules may have additional costs: to train CDS employers on using EVV; to train the CDS employers and service providers on their responsibilities for using EVV; to assist CDS employers

with the purchase and management of EVV equipment such as alternative devices or mobile devices for service providers to use while employed; to provide on-going assistance and support to the CDS employer regarding EVV; to monitor and verify the service provider's service delivery using EVV; and to ensure all data elements required by HHSC are uploaded or entered completely and accurately into the EVV system before billing for the delivered services.

A CDS employer not using EVV prior to the effective date of the proposed rules may have additional costs: for travel costs to attend optional in-person training events; to purchase equipment to enable a service provider to clock in and out of the EVV system, such as a landline telephone or mobile device; and to purchase equipment to enable the CDS employer to access the EVV system, such as a mobile device, computer, tablet, mobile service, or internet service.

A CDS employer's costs may be reduced or offset depending on the CDS employer's individual situation. Examples include: attending online training instead of traveling to receive training; using the CDS employer's support services budget to purchase equipment, services or pay for travel costs; delegating EVV system responsibilities to the FMSA, thus minimizing the need to purchase equipment or services; and using existing or free equipment, such as the CDS employer's existing landline or mobile device, a mobile device obtained through federal assistance programs, or an alternative device provided by the EVV vendor.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Sarah Hambrick, EVV Operations Policy Specialist, P.O. Box 13247, Mail Code W-465, Austin, Texas 78711-3247, street address 701 W 51st St, Austin, Texas, 78751-2312; or e-mailed to EVV@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 21R152" in the subject line.

1 TAC §§354.4001, 354.4003, 354.4005 - 354.4007, 354.4009, 354.4011, 354.4013, 354.4015, 354.4017, 354.4019, 354.4021, 354.4023, 354.4025

STATUTORY AUTHORITY

The amendments and new sections are authorized by Texas Government Code, §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Government Code, §531.024172, which provides that the Executive Commissioner of HHSC may adopt rules to implement an electronic visit verification system to electronically verify that personal care services or other services identified by HHSC are provided to Medicaid recipients.

The amendments and new sections affect Texas Government Code, §531.0055 and §531.024172 and Human Resources Code, §32.021.

§354.4001. Purpose and Authority.

[~~(a)~~] The purpose of this subchapter is to describe [~~implement~~] requirements related to [~~for the Texas~~] electronic visit verification authorized by: [~~(EVV) system to electronically verify that services identified in this subchapter, or any other services identified by HHSC, are provided to a member in accordance with a prior authorization or plan of care as applicable to the appropriate program.~~]

(1) Title XIX, Section 1903(l) of the Social Security Act (42 U.S.C. §1396b(l));

(2) Texas Government Code §531.024172; and

(3) Texas Human Resources Code §161.086.

[~~(b) The provisions of this subchapter are issued in accordance with the following federal and state laws:~~]

[~~(1) Title XIX, Section 1903(l) of the Social Security Act (42 U.S.C. §1396b);~~]

[~~(2) Texas Government Code §531.024172; and~~]

[~~(3) Texas Human Resource Code §161.086.~~]

§354.4003. Definitions.

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

(1) CDS employer--Consumer directed services employer. A member or the member's legally authorized representative who participates in the CDS option and whose financial management services agency (FMSA) uses an electronic visit verification (EVV) vendor system or an EVV proprietary system. A CDS employer is responsible for hiring and retaining a service provider who delivers a service described in §354.4005 of this subchapter (relating to Personal Care Services that Require the Use of EVV) or §354.4006 of this subchapter (relating to Home Health Care Services that Require the Use of EVV).

(2) CDS option--Consumer directed services option. A service delivery option in which a CDS employer employs and retains a service provider and directs the delivery of a service described in §354.4005 or §354.4006 of this subchapter.

(3) CFC--Community First Choice. A Medicaid state plan option governed by Code of Federal Regulations, Title 42, Part 441, Subpart K, Home and Community-Based Attendant Services and Supports State Plan Option (Community First Choice). CFC services include the following.

(A) CFC HAB--CFC habilitation. A Medicaid state plan service that provides habilitation through CFC as described in §354.1361 of this chapter (relating to Definitions).

(B) CFC PAS--CFC personal assistance services. A Medicaid state plan service that provides personal assistance services through CFC as described in §354.1361 of this chapter.

(C) CFC PAS/HAB--CFC personal assistance services/habilitation. A Medicaid state plan service provided through CFC that provides both personal assistance services and habilitation.

(4) CLASS Program--Community Living Assistance and Support Services Program. A Medicaid waiver program approved by the Centers for Medicare & Medicaid Services under Title XIX, Section 1915(c) of the Social Security Act, as described in 26 TAC Chapter 259 (relating to Community Living Assistance and Support Services (CLASS) Program and Community First Choice (CFC) Services).

(5) [~~(1)~~] CMS--Centers for Medicare & Medicaid Services. [~~(CMS)--~~] The federal agency within the United States Department of Health and Human Services that administers the Medicare and Medicaid programs.

[~~(2) Claims administrator--The entity HHSC has designated to perform functions such as processing certain Medicaid program provider claims, managing the EVV aggregator, and performing EVV vendor management functions.~~]

(6) [~~(3)~~] Community Attendant Services Program--A Medicaid state plan program operating under Title XIX of the Social Security Act, as described in 40 TAC Chapter 47 (relating to Primary Home Care, Community Attendant Services, and Family Care Programs).

[~~(4) Community First Choice (CFC)--A Medicaid state plan option governed by Code of Federal Regulations, Title 42, Part 441, Subpart K, Home and Community-Based Attendant Services and Supports State Plan Option (Community First Choice). This includes STAR members who receive these services through the traditional Medicaid service model also referred to as fee-for-service. CFC services include:~~]

[~~(A) Community First Choice Habilitation (CFC HAB), a Medicaid state plan service that provides habilitation through CFC;~~]

[~~(B) Community First Choice Personal Assistance Services (CFC PAS), a Medicaid state plan service that provides personal assistance services through CFC; and~~]

[~~(C) Community First Choice Personal Assistance Services/Habilitation (CFC PAS/HAB), a Medicaid state plan service provided through CFC that provides both personal assistance services and habilitation combined into one service.~~]

[~~(5) Community Living Assistance and Support Services (CLASS) Program--The Medicaid waiver program approved by CMS under Title XIX, Section 1915(c) of the Social Security Act, as described in 40 TAC Chapter 45 (relating to Community Living Assistance and Support Services and Community First Choice (CFC) Services).~~]

[~~(6) Consumer Directed Services (CDS) employer--A member or legally authorized representative (LAR) who chooses to participate in the CDS option. A CDS employer, the member or LAR, is responsible for hiring and retaining a service provider who delivers a service described in §354.4005 of this subchapter (relating to Applicability).~~]

[~~(7) Consumer Directed Services option (CDS option)--A service delivery option in which a member or LAR employs and retains a service provider and directs the delivery of a service described in §354.4005 of this subchapter.~~]

(7) [~~(8)~~] DBMD Program--Deaf Blind with Multiple Disabilities. [~~(DBMD) Program--~~] The Medicaid waiver program approved by CMS under Title XIX, Section 1915(c) of the Social Security Act, as described in 26 TAC Chapter 260 [~~40 TAC Chapter 42~~] (relating to Deaf Blind with Multiple Disabilities (DBMD) Program and Community First Choice (CFC) Services).

(8) [~~(9)~~] EVV--Electronic visit verification. [~~(EVV)--~~]The documentation and verification of service delivery through an EVV system.

(9) [~~(10)~~] EVV aggregator--A centralized database that collects, validates, and stores statewide EVV visit data transmitted by an EVV system.

(10) EVV claim--A request for payment of a service described in §354.4005 or §354.4006 of this subchapter submitted to HHSC, HHSC's designated contractor, or a managed care organization (MCO) in accordance with the EVV Policy Handbook.

(11) EVV Policy Handbook--A handbook promulgated by HHSC that contains policies and requirements related to EVV [~~The HHSC handbook that provides EVV standards and policy requirements~~].

(12) EVV portal--An online system established by HHSC that allows users to perform searches, view reports and view EVV claim match results associated with data in the EVV aggregator.

(13) EVV portal user--A person who is employed by or contracts with a program provider or FMSA and has access to the EVV portal.

(14) [~~(12)~~] EVV proprietary system--An HHSC EVV system purchased or developed by a program provider or FMSA approved by HHSC in accordance with §354.4013 of this subchapter (relating to HHSC and MCO Compliance Reviews and Enforcement Actions) [~~HHSC-approved EVV system~~] that a program provider or FMSA uses [~~financial management services agency (FMSA) may opt to use~~] instead of an EVV vendor system. [~~that:~~]

[~~(A) is purchased or developed by a program provider or an FMSA;~~]

[~~(B) is used to exchange EVV information with HHSC or a managed care organization (MCO); and~~]

[~~(C) complies with the requirements of Texas Government Code §531.024172 or its successors.~~]

(15) [~~(13)~~] EVV system--An EVV vendor system or an EVV proprietary system used to electronically document and verify the data elements described in §354.4009(a) of this subchapter (relating to EVV Visit Transaction and EVV Claim) [~~§354.4007 of this subchapter (relating to EVV System)~~] for a visit conducted to provide a service described in §354.4005 or §354.4006 of this subchapter.

(16) EVV system user--A person who has access to the EVV system, including a person employed by or contracting with a program provider, FMSA, or CDS employer.

(17) [~~(14)~~] EVV vendor system--An EVV system developed and operated by a vendor that contracts with HHSC or HHSC's designated contractor [~~provided by an EVV vendor selected by the claims administrator, on behalf of HHSC~~] that a program provider or FMSA uses [~~may opt to use~~] instead of an EVV proprietary system.

(18) [~~(15)~~] EVV visit transaction--A [~~data~~] record generated by an EVV system that contains the data elements described in §354.4009(a) [~~§354.4007~~] of this subchapter for a visit conducted to provide a service described in §354.4005 or §354.4006 of this subchapter.

(19) [~~(16)~~] FC Program--Family Care [~~(FC)~~] Program. [--]A program funded under Title XX, Subtitle A of the Social Security Act, as described in 40 TAC Chapter 47.

(20) [~~(17)~~] FMSA--Financial management services agency. [~~(FMSA)--~~]A program provider [~~An entity~~] that contracts with HHSC or an MCO to provide financial management services to a CDS employer as described in 40[~~,~~] TAC Chapter 41 (relating to Consumer Directed Services Option).

(21) HCBS-AMH Program--Home and Community-Based Services Adult Mental Health Program. A Medicaid state plan option approved by CMS under Title XIX, Section 1915(i) of the Social Security Act, as described in 26 TAC Chapter 307, Subchapter B (relating to Home and Community-Based Services--Adult Mental Health Program).

(22) HCS Program--Home and Community-based Services Program. A Medicaid waiver program approved by CMS under Title XIX, Section 1915(c) of the Social Security Act, as described in 26 TAC Chapter 263 (relating to Home and Community-based Services (HCS) Program and Community First Choice (CFC)).

(23) [~~(18)~~] HHSC--Texas Health and Human Services Commission.

[~~(19) Home and Community-Based Services (HCBS) Adult Mental Health Program--A Medicaid state plan option approved by CMS under Title XIX, Section 1915(i) of the Social Security Act, as described in 26 TAC Chapter 307, Subchapter B (relating to Home and Community-Based Services--Adult Mental Health Program).~~]

[~~(20) Home and Community-based Services (HCS) Program--A Medicaid waiver program approved by CMS under Title XIX, Section 1915(c) of the Social Security Act, as described in 40 TAC Chapter 9, Subchapter D (relating to Home and Community-based Services (HCS) Program and Community First Choice (CFC)).~~]

(24) Home health aide--Has the meaning set forth in 26 TAC §558.2 (relating to Definitions).

(25) ICF/IID--Intermediate care facility for individuals with an intellectual disability or related conditions. An ICF/IID is a facility that is licensed in accordance with THSC Chapter 252 or certified by HHSC.

(26) IMD--Institution for mental diseases. Has the meaning set forth in 25 TAC §419.373 (relating to Definitions).

(27) LVN--Licensed vocational nurse. A person licensed to practice as a vocational nurse as described in Texas Occupations Code Chapter 301.

(28) [~~(21)~~] MCO--Managed care organization. [~~(MCO)--~~] Has the meaning set forth in Texas Government Code §536.001.

(29) [~~(22)~~] MDCP--Medically Dependent Children Program. [~~(MDCP)--~~] A Medicaid waiver program approved by CMS under Title XIX, Section 1915(c) of the Social Security Act, as described in Chapter 353, Subchapter M of this title (relating to Home and Community Based Services in Managed Care).

(30) [~~(23)~~] MDCP STAR Health covered service--Medically Dependent Children Program STAR Health [~~(MDCP STAR Health)~~] covered service. [~~--~~]A service provided to a member eligible to receive MDCP benefits under the STAR Health Program.

(31) [~~(24)~~] MDCP STAR Kids covered service--Medically Dependent Children Program STAR Kids [~~(MDCP STAR Kids)~~] covered service. [~~--~~]A service provided to a member eligible to receive MDCP benefits under the STAR Kids Program.

(32) [~~(25)~~] Member--A person enrolled in one of the following: [~~eligible to receive a service described in §354.4005 of this subchapter.~~]

(A) traditional Medicaid service delivery model also referred to as fee-for-service;

(B) the CLASS Program;

(C) the Community Attendant Services Program;

(D) the DBMD Program;

(E) the FC Program;

(F) the HCBS-AMH Program;

(G) the HCS Program;

(H) the Primary Home Care Program;

(I) the STAR Program;

(J) the STAR Health Program;

(K) the STAR Kids Program;

(L) the STAR+PLUS Program;

(M) the STAR+PLUS Home and Community-Based Services Program;

(N) the STAR+PLUS Medicare-Medicaid Program;

(O) the Texas Home Living Program;

(P) Texas Health Steps Comprehensive Care Program (CCP); or

(Q) the Youth Empowerment Services Program.

(33) Nursing facility--A facility licensed in accordance with Texas Health and Safety Code Chapter 242.

(34) Occupational therapist--A person licensed as an occupational therapist in accordance with Texas Occupations Code Chapter 454.

(35) PCS--Personal Care Services. Support services provided to a member enrolled in Texas Health Steps CCP who requires assistance with activities of daily living or instrumental activities of daily living as described in §363.602 of this title (relating to Definitions).

(36) PDN--Private duty nursing. Has the same meaning as the term "Private duty nursing (PDN) Services" in 1 TAC Chapter 363, Subchapter C, §363.303 (relating to Definitions).

(37) [~~(26)~~] Primary Home Care Program--A Medicaid state plan program operating under Title XIX of the Social Security Act, as described in 40 TAC Chapter 47.

(38) Physical therapist--A person licensed as a physical therapist in accordance with Texas Occupations Code Chapter 453.

(39) [~~(27)~~] Program provider--An entity that contracts with HHSC or an MCO to provide a service described in §354.4005 or §354.4006 of this subchapter and that uses an EVV vendor system or an EVV proprietary system. A service provider described in paragraph (43)(B) of this section is both a program provider and a service provider.

(40) PSO--Proprietary system operator. A program provider or FMSA that uses an EVV proprietary system.

(41) [~~(28)~~] Reason code--A standardized HHSC-approved code entered in [~~into~~] an EVV system to explain the [~~specific~~] reason for completing visit maintenance [~~a change was made to an EVV visit transaction~~].

(42) RN--Registered nurse. A person licensed to practice as a registered nurse as described in Texas Occupations Code Chapter 301.

(43) [~~(29)~~] Service provider--A person who provides a service described in §354.4005 or §354.4006 of this subchapter and who [~~is employed or contracted by~~]:

(A) is employed by or contracting with:

(i) a program provider; or

(ii) a CDS employer; or

(B) who is contracting with:

(i) an MCO; or

(ii) HHSC.

[~~(A) a program provider;~~]

[~~(B) a CDS employer; or~~]

[~~(C) a member who has selected the service responsibility option (SRO).~~]

(44) [~~(30)~~] SRO--Service responsibility option. [~~(SRO)--~~] A service delivery option described in 40 TAC Chapter 43 (relating to Service Responsibility Option) in which a member or legally authorized representative [~~LAR~~] selects, trains, and provides daily management of a service provider, while the fiscal, personnel, and service back-up plan responsibilities remain with the program provider.

(45) [~~(31)~~] STAR--State of Texas Access Reform.

[~~(32) STAR Program--A Medicaid program operating under Title XIX, Section 1115 of the Social Security Act. The program provides services through a managed care delivery model to a member enrolled in STAR as described in Chapter 353, Subchapter I of this title (relating to STAR).~~]

(46) [~~(33)~~] STAR Health Program--A [~~The~~] Medicaid program operating under Title XIX, Section 1915(a) of the Social Security Act and Texas Family Code, Chapter 266. The program provides services through a managed care delivery model to a member enrolled in STAR Health as described in Chapter 353, Subchapter H of this title (relating to STAR Health).

(47) [~~(34)~~] STAR Kids Program--A [~~The~~] Medicaid program operating under Title XIX, Section 1115 of the Social Security Act and Texas Government Code Chapter 533. The program provides services through a managed care delivery model to a member enrolled in STAR Kids as described in Chapter 353, Subchapter N of this title (relating to STAR Kids).

(48) STAR Program--A Medicaid program operating under Title XIX, Section 1115 of the Social Security Act. The program provides services through a managed care delivery model to a member enrolled in STAR as described in Chapter 353, Subchapter I of this title (relating to STAR).

(49) [~~(35)~~] STAR+PLUS HCBS Program--STAR+PLUS Home and Community-Based Services Program. [~~(STAR+PLUS HCBS Program)--~~] A Medicaid program operating through a federal waiver under Title XIX, Section 1115 of the Social Security Act. The program provides services to a member eligible to receive HCBS benefits under the STAR+PLUS Program, as described in Chapter 353, Subchapter M of this title (relating to Home and Community Based Services in Managed Care).

(50) [~~(36)~~] STAR+PLUS MMP--STAR+PLUS Medicare-Medicaid Plan. [~~(STAR+PLUS MMP)--~~] A managed care program operating under Title XIX, Section 1115A of the Social Security Act that provides the authority to test and evaluate a fully integrated care model for clients who are dual eligible. The STAR+PLUS MMPs contract [~~are contracted~~] with CMS and HHSC to participate in the Dual Demonstration Program described in Chapter 353, Subchapter L of this title (relating to Texas Dual Eligibles Integrated Care Demonstration Project).

(51) [~~(37)~~] STAR+PLUS Program--A Medicaid program operating under Title XIX, Section 1115 of the Social Security Act, and Texas Government Code Chapter 533. The program provides services through a managed care delivery model to a member enrolled in STAR+PLUS as described in Chapter 353, Subchapter G of this title (relating to STAR+PLUS).

(52) [~~(38)~~] TAC--Texas Administrative Code.

(53) [~~(39)~~] Texas Health Steps CCP--Texas Health Steps Comprehensive Care Program. [~~--~~] A Medicaid comprehensive program approved by CMS under Title XIX, Section 1905 of the Social Security Act, as described in Chapter 363 [~~, Subchapter F~~] of this title (relating to Texas Health Steps Comprehensive Care Program [~~Personal Care Services~~]). [~~This includes STAR members who receive these services through the traditional Medicaid service model also referred to as fee-for-service.~~]

(54) [~~(40)~~] TxHmL--Texas Home Living [~~(TxHmL)~~] Program. [~~--~~]A Medicaid waiver program approved by CMS under Title XIX, Section 1915(c) of the Social Security Act, as described in 26 TAC Chapter 262 [~~40 TAC Chapter 9, Subchapter N~~] (relating to Texas Home Living (TxHmL) Program and Community First Choice (CFC)).

(55) Vendor hold--A temporary suspension of payments for claims that are due to a program provider or FMSA.

(56) Visit maintenance--As described in the EVV Policy Handbook, a process to:

(A) manually enter data elements described in §354.4009(a) of this subchapter in an EVV system;

(B) correct the data elements described in §354.4009(a) of this subchapter that are inaccurate in an EVV visit transaction; or

(C) include the data elements described in §354.4009(a) of this subchapter that are missing in an EVV visit transaction.

(57) [~~(41)~~] YES Program--Youth Empowerment Services Program. [~~--~~]A Medicaid waiver approved by CMS under Title XIX, Section 1915(c) of the Social Security Act as described in 26 TAC Chapter 307, Subchapter A (relating to Youth Empowerment Services (YES)).

§354.4005. Personal Care Services that Require the Use of EVV.

(a) A program provider must ensure a service provider uses EVV to document the provision of the following personal care services by the program provider:

(1) in the traditional Medicaid service model also referred to as fee-for-service, including for members enrolled in STAR who receive PCS through fee-for-service:

(A) CFC PAS;

(B) CFC HAB;

(C) PCS provided under Texas Health Steps CCP, including SRO; and

(D) PCS-Behavioral Health provided under Texas Health Steps CCP, including SRO;

(2) in the CLASS Program:

(A) CFC PAS/HAB; and

(B) in-home respite;

(3) personal attendant services provided through the Community Attendant Services Program, including SRO;

(4) in the DBMD Program:

(A) CFC PAS/HAB; and

(B) in-home respite;

(5) personal attendant services provided through the FC Program, including SRO;

(6) in the HCBS-AMH Program:

(A) supported home living; and

(B) in-home respite;

(7) in the HCS Program:

(A) CFC PAS/HAB;

(B) in-home respite; and

(C) in-home individualized skills and socialization provided to members with the residential type of "own/family home";

(8) personal attendant services provided through the Primary Home Care Program, including SRO;

(9) in the STAR Health Program:

(A) CFC PAS, including SRO;

(B) CFC HAB, including SRO; and

(C) for a member in STAR Health MDCP:

(i) in-home respite, with and without RN delegation, including SRO; and

(ii) flexible family support, with and without RN delegation, including SRO;

(10) in the STAR Kids Program:

(A) CFC PAS, including SRO;

(B) CFC HAB, including SRO; and

(C) for a member in STAR Kids MDCP:

(i) in-home respite, with and without RN delegation, including SRO; and

(ii) flexible family support, with and without RN delegation, including SRO;

(11) in the STAR+PLUS Program:

(A) personal assistance services, including SRO;

(B) CFC PAS, including SRO; and

(C) CFC HAB, including SRO;

(12) in the STAR+PLUS HCBS Program:

(A) in-home respite care, including SRO;

(B) protective supervision, including SRO;

(C) personal assistance services, including SRO;

(D) CFC PAS, including SRO; and

(E) CFC HAB, including SRO;

(13) in the STAR+PLUS MMP:

(A) in-home respite care, including SRO;

(B) protective supervision, including SRO;

(C) personal assistance services, including SRO;

(D) CFC PAS, including SRO; and

(E) CFC HAB, including SRO;

(14) in the TxHmL Program:

(A) CFC PAS/HAB;

(B) in-home respite; and

(C) in-home individualized skills and socialization;

(15) in-home respite provided in the YES Program; and

(16) any other service required by federal or state mandates.

(b) A CDS employer must ensure a service provider uses EVV to document the provision of the following personal care services through the CDS option:

(1) in the traditional Medicaid service model also referred to as fee-for-service:

(A) CFC PAS;

(B) CFC HAB;

(C) PCS provided under Texas Health Steps CCP; and

(D) PCS-Behavioral Health provided under Texas Health Steps CCP;

(2) in the CLASS Program:

(A) CFC PAS/HAB; and

(B) in-home respite;

(3) personal attendant services provided through the Community Attendant Services Program;

(4) in the DBMD Program:

(A) CFC PAS/HAB; and

(B) in-home respite;

(5) personal attendant services provided through the FC Program;

(6) in the HCS Program:

(A) CFC PAS/HAB; and

(B) in-home respite;

(7) personal attendant services provided through the Primary Home Care Program;

(8) in the STAR Health Program:

(A) CFC PAS;

(B) CFC HAB; and

(C) for a member in STAR Health MDCP:

(i) in-home respite, with and without RN delegation; and

(ii) flexible family support, with and without RN delegation;

(9) in the STAR Kids Program:

(A) CFC PAS;

(B) CFC HAB; and

(C) for a member in STAR Kids MDCP:

(i) in-home respite, with and without RN delegation; and

(ii) flexible family support, with and without RN delegation;

(10) in the STAR+PLUS Program:

(A) personal assistance services;

(B) CFC PAS; and

(C) CFC HAB;

(11) in the STAR+PLUS HCBS Program:

(A) in-home respite care;

(B) protective supervision;

(C) personal assistance services;

(D) CFC PAS; and

(E) CFC HAB;

(12) in the STAR+PLUS MMP:

(A) in-home respite care;

(B) protective supervision;

(C) personal assistance services;

(D) CFC PAS; and

(E) CFC HAB; and

(13) in the TxHmL Program:

(A) CFC PAS/HAB;

(B) in-home respite; and

(C) in-home individualized skills and socialization.

§354.4006. Home Health Care Services that Require the Use of EVV.

(a) A program provider must ensure a service provider uses EVV to document the provision of the following home health care services by the program provider on or after January 1, 2024:

(1) in the traditional Medicaid service model also referred to as fee-for-service, for a member who does not reside in a nursing facility, an ICF/IID, or an IMD, the following services when provided in the residence of the member:

(A) any nursing service, other than PDN;

(B) occupational therapy; and

(C) physical therapy;

(2) in the CLASS Program, for a member who does not receive support family services or continued family services, the following services when provided in the residence of the member:

(A) any nursing service;

(B) occupational therapy; and

(C) physical therapy;

(3) in the DBMD Program, for a member who does not receive licensed assisted living or licensed home health assisted living, the following services when provided in the residence of the member:

(A) any nursing service;

(B) occupational therapy; and

(C) physical therapy;

(4) in the HCS Program, for a member whose residential type is "own/family home," the following services when provided in the residence of the member:

(A) any nursing service;

(B) occupational therapy; and

(C) physical therapy;

(5) in the HCBS-AMH Program, for a member who does not receive host home/companion care, supervised living services, or assisted living services, the following services when provided in the residence of the member:

(A) nursing - RN; and

(B) nursing - LVN;

(6) in the STAR Program, the following services when provided in the residence of the member:

(A) home health nursing;

(B) occupational therapy;

(C) physical therapy; and

(D) personal care services provided by a home health aide under the supervision of an RN, occupational therapist, or physical therapist;

(7) in the STAR Health Program, the following services when provided in the residence of the member:

(A) home health nursing, other than PDN;

(B) occupational therapy;

(C) physical therapy; and

(D) personal care services provided by a home health aide under the supervision of an RN, occupational therapist, or physical therapist;

(E) nursing delegation and supervision of PCS and CFC tasks; and

(F) for a member in STAR Health MDCP, the following services when provided in the residence of the member:

(i) RN delegation and supervision of personal care services and CFC tasks, other than PDN;

(ii) flexible family supports services performed by RN or an LVN; and

(iii) in-home respite performed by RN or an LVN;

(8) in the STAR Kids Program, the following services when provided in the residence of the member:

(A) home health nursing, other than PDN;

(B) occupational therapy;

(C) physical therapy;

(D) personal care services provided by a home health aide under the supervision of an RN, occupational therapist, or physical therapist;

(E) nursing delegation and supervision of PCS and CFC tasks; and

(F) for a member in STAR Kids MDCP, the following services when provided in the residence of the member:

(i) RN delegation and supervision of personal care services and CFC tasks, other than PDN;

(ii) flexible family supports services performed by an RN or LVN; and

(iii) in-home respite performed by an RN or LVN;

(9) in the STAR+PLUS Program, the following services when provided in the residence of the member:

(A) home health nursing;

(B) occupational therapy;

(C) physical therapy; and

(D) personal care services provided by a home health aide under the supervision of an RN, occupational therapist, or physical therapist;

(10) in the STAR+PLUS HCBS Program, for members not receiving adult foster care, assisted living services - single occupancy, assisted living services - double occupancy, or assisted living services - non-apartment, the following services when provided in the residence of the member:

(A) home health nursing, including SRO;

(B) occupational therapy, including SRO;

(C) physical therapy, including SRO; and

(D) personal care services provided by a home health aide under the supervision of an RN, occupational therapist, or physical therapist, including SRO;

(11) in the STAR+PLUS MMP, for members not receiving adult foster care, assisted living services - single occupancy, assisted living services - double occupancy, or assisted living services - non-apartment, the following services when provided in the residence of the member:

(A) home health nursing, including SRO;

(B) occupational therapy, including SRO;

(C) physical therapy, including SRO; and

(D) personal care services provided by a home health aide under the supervision of an RN, occupational therapist, or physical therapist, including SRO;

(12) in the TxHmL Program, the following services when provided in the residence of the member:

(A) any nursing service;

(B) occupational therapy; and

(C) physical therapy; and

(13) any other service required by federal or state mandates.

(b) A CDS employer must ensure a service provider uses EVV to document the provision of the following home health care services using the CDS option on or after January 1, 2024:

(1) in the CLASS Program, the following services when provided in the residence of the member:

(A) any nursing service;

(B) occupational therapy; and

(C) physical therapy;

(2) in the HCS Program, for a member whose residential type is "own/family home," the following services when provided in the residence of the member:

(A) any nursing service;

(B) occupational therapy; and

(C) physical therapy;

(3) in the STAR Health Program for a member in STAR Health MDCP, the following services when provided in the residence of the member:

(A) flexible family supports services performed by any RN or any LVN; and

(B) in-home respite performed by any RN or any LVN;

(4) in the STAR Kids Program for a member in STAR Kids MDCP, the following services when provided in the residence of the member:

(A) flexible family supports services performed by any RN or any LVN; and

(B) in-home respite performed by any RN or any LVN;

(5) in the STAR+PLUS Program, the following services when provided in the residence of the member:

(A) home health nursing;

(B) occupational therapy;

(C) physical therapy; and

(D) personal care services provided by a home health aide under the supervision of an RN, occupational therapist, or physical therapist;

(6) in the STAR+PLUS HCBS Program, the following services when provided in the residence of the member:

(A) home health nursing;

(B) occupational therapy;

(C) physical therapy; and

(D) home health aide services as an extension of physical therapy, occupational therapy, or nursing services;

(7) in the STAR+PLUS MMP, the following services when provided in the residence of the member:

(A) home health nursing;

(B) occupational therapy;

(C) physical therapy; and

(D) home health aide services as an extension of physical therapy, occupational therapy, or nursing services; and

(8) in the TxHmL Program, the following services when provided in the residence of the member:

(A) any nursing service;

(B) occupational therapy; and

(C) physical therapy.

§354.4007. EVV System.

(a) A program provider or FMSA must use one of the following EVV systems to electronically document the provision of a service described in §354.4005 or §354.4006 of this subchapter (relating to Personal Care Services that Require the Use of EVV and Home Health Care Services that Require the use of EVV):

(1) an EVV vendor system; or

(2) an EVV proprietary system.

(b) A CDS employer must use the EVV system selected by their FMSA.

(c) Except as provided in subsection (d) of this section, a program provider, an FMSA, and a CDS employer must ensure that a service provider uses an EVV system to electronically document the provision of a service described in §354.4005 or §354.4006 of this subchapter as described in the EVV Policy Handbook.

(d) If a service provider fails to use an EVV system to document the provision of a service described in §354.4005 or §354.4006 of this subchapter or if a service provider cannot use an EVV system because the EVV system is unavailable, a program provider, FMSA or a CDS employer must:

(1) ensure the data elements required by §354.4009(a)(1) of this subchapter (relating to EVV Visit Transaction and EVV Claim) are accurate; and

(2) complete visit maintenance.

(e) If a program provider or an FMSA does not comply with subsections (a), (c), or (d) of this section, HHSC or an MCO may do one or more of the following:

(1) deny payment for a service;

(2) take enforcement action including:

(A) requiring a program provider or FMSA to complete a corrective action plan; or

(B) propose to terminate the contract of the program provider or FMSA.

(f) If a CDS employer does not comply with subsections (b), (c), or (d) of this section, HHSC or an MCO may:

(1) require the CDS employer to complete a corrective action plan; or

(2) propose to terminate the member's participation in the CDS option.

§354.4009. EVV Visit Transaction and EVV Claim.

(a) A program provider and an FMSA must:

(1) ensure that an EVV visit transaction contains the data elements required by the EVV system, including:

(A) the first and last name of the member who received the service;

(B) the type of service provided;

(C) the date the service was provided;

(D) the time the service began and the time the service ended;

(E) the first and last name of the service provider who provided the service;

(F) the location, including the address or geolocation, where the service was provided; and

(G) other information HHSC determines necessary to ensure the accurate payment of a claim for services, as described in the EVV Policy Handbook; and

(2) ensure the data elements required by paragraph (1) of this subsection are accurate.

(b) A CDS employer who elects to complete visit maintenance on the HHSC Employer's Selection for Electronic Visit Verification Responsibilities form must:

(1) ensure that an EVV visit transaction contains the data elements required by the EVV system, including those listed in subsection (a)(1) of this section; and

(2) ensure the data elements required by paragraph (1) of this subsection are accurate.

(c) A program provider and an FMSA must:

(1) before submitting an EVV claim:

(A) ensure that the EVV visit transaction is transmitted to and accepted by the EVV Portal; and

(B) ensure that the data elements on the EVV claim match the data elements in the accepted EVV visit transaction; and

(2) submit the EVV claim in accordance with HHSC or MCO billing requirements and the EVV Policy Handbook.

(d) HHSC or an MCO denies an EVV claim or recoups a payment made to a program provider or an FMSA if the EVV claim does not meet requirements described in the EVV Policy Handbook, including if:

(1) the EVV claim does not match the accepted EVV visit transaction; or

(2) there is no accepted EVV visit transaction that supports the EVV claim.

§354.4011. Visit Maintenance.

(a) A program provider and an FMSA must complete visit maintenance, including the visit maintenance described in §354.4007(d) of this subchapter (relating to EVV System):

(1) in accordance with the EVV Policy Handbook; and

(2) within the visit maintenance time frame after the date a service was provided as described in the EVV Policy Handbook.

(b) If a CDS employer elects to complete visit maintenance on the HHSC Employer's Selection for Electronic Visit Verification Responsibilities form, the CDS employer must complete visit maintenance in accordance with subsection (a)(1) and (2) of this section.

(c) After the visit maintenance time frame has expired, the program provider, FMSA, and CDS employer may complete visit maintenance only if:

(1) the program provider, FMSA, or CDS employer submits a Visit Maintenance Unlock Request in accordance with the EVV Policy Handbook; and

(2) HHSC or an MCO approves the Visit Maintenance Unlock Request.

§354.4013. HHSC and MCO Compliance Reviews and Enforcement Actions.

(a) HHSC and an MCO conduct the following compliance reviews in accordance with the EVV Policy Handbook:

(1) an EVV Usage Review;

(2) an EVV Landline Phone Verification Review; and

(3) an EVV Required Free Text Review.

(b) If HHSC or an MCO determines from an EVV Usage Review that a program provider's or FMSA's EVV Usage score is less than 80% and such score is:

(1) the first occurrence within a 24-month period, HHSC or an MCO may require the program provider or FMSA to complete EVV policy, system, and portal trainings within a specific time frame;

(2) the second occurrence within a 24-month period, HHSC or an MCO may require the program provider or FMSA to complete a corrective action plan within 10 business days after the date the program provider or FMSA is notified that the EVV Usage score is less than 80%; or

(3) the third occurrence within a 24-month period, HHSC or an MCO may propose to terminate the contract of the program provider or FMSA.

(c) If HHSC or an MCO determines from an EVV Usage Review that a CDS Employer's EVV Usage score is less than 80% and such score is:

(1) the first occurrence within a 24-month period, HHSC or an MCO may require the CDS employer to complete EVV policy and system trainings within a specific time frame;

(2) the second occurrence within a 24-month period, HHSC or an MCO may require the CDS employer to complete a corrective action plan within 10 business days after the date the CDS employer is notified that the EVV Usage score is less than 80%; or

(3) the third occurrence within a 24-month period, HHSC or an MCO may propose to terminate the member's participation in the CDS option.

(d) If a program provider or FMSA does not complete EVV trainings or a corrective action plan as required by subsection (b)(1) and (2) of this section, HHSC or the MCO may impose a vendor hold on the program provider or FMSA until the EVV trainings or a corrective action plan is completed.

(e) If a CDS employer does not complete EVV trainings required by subsection (c)(1) of this section, HHSC or the MCO may require the CDS employer to complete a corrective action plan within 10 business days after the date the CDS employer is notified that EVV trainings were not completed.

(f) If a CDS employer does not complete a corrective action plan as required by subsections (c)(2) or (e) of this section, HHSC or the MCO may propose to terminate the member's participation in the CDS option.

(g) If HHSC or an MCO determines from an EVV Landline Phone Verification Review that a service provider has used an unallowable phone type as described in the EVV Policy Handbook to clock in and clock out of the EVV system:

(1) HHSC or an MCO provides written notification of such determination to the program provider or FMSA;

(2) within 20 business days after receipt of the written notification, the program provider or FMSA must provide the documentation described in the written notification to HHSC or the MCO; and

(3) if the program provider or FMSA does not provide the documentation described in the written notification to HHSC or the MCO, HHSC or the MCO may impose a vendor hold on the program provider or FMSA until the program provider or FMSA provides the documentation.

(h) If HHSC or an MCO determines from an EVV Required Free Text Review that a program provider, an FMSA, or a CDS employer who elects to complete visit maintenance on the HHSC Employer's Selection for Electronic Visit Verification Responsibilities form did not enter free text in the EVV system on an EVV visit transaction when using a reason code as required by the EVV Policy Handbook, HHSC or the MCO may recoup payment made to the program provider or the FMSA for the EVV claim associated with the EVV visit transaction.

§354.4015. EVV Training Requirements.

(a) A program provider that uses an EVV vendor system, an FMSA that uses a vendor system, and a CDS employer whose FMSA uses an EVV vendor system must ensure that an EVV system user completes EVV System Training described in the EVV Policy Handbook and provided by the EVV vendor:

(1) before the EVV system user begins using the EVV system; and

(2) yearly thereafter.

(b) A PSO or a CDS employer whose FMSA is a PSO must ensure that an EVV system user completes EVV System Training described in the EVV Policy Handbook and provided by the PSO or an entity on behalf of the PSO:

(1) before the EVV system user begins using the EVV system; and

(2) yearly thereafter.

(c) A program provider, an FMSA, and a CDS employer must ensure that an EVV system user completes EVV Policy Training described in the EVV Policy Handbook and provided by HHSC or the MCO with which the program provider or FMSA contracts:

(1) before the EVV system user begins using the EVV system; and

(2) yearly thereafter.

(d) A program provider and FMSA must ensure that an EVV portal user:

(1) completes EVV Portal Training described in the EVV Policy Handbook and provided by HHSC or its designated contractor:

(A) before the EVV portal user begins using the EVV portal; and

(B) yearly thereafter; and

(2) completes EVV Policy Training described in the EVV Policy Handbook provided by HHSC or the MCO with which the program provider or FMSA contracts:

(A) before the EVV portal user begins using the EVV portal; and

(B) yearly thereafter.

(e) A program provider and a CDS employer must train a service provider on the clock in and clock out portion of the EVV System Training described in subsections (a) and (b) of this section:

(1) before the service provider begins using the EVV system; and

(2) yearly thereafter.

(f) A program provider that is not an FMSA and uses an EVV vendor system must document the following to demonstrate compliance with subsections (a) and (c) - (e) of this section:

(1) the name of the training;

(2) the name of the person who completed the training; and

(3) the date of the training.

(g) A PSO that is not an FMSA must document the following to demonstrate compliance with subsections (b) - (e) of this section:

(1) the name of the training;

(2) the name of the person who completed the training; and

(3) the date of the training.

(h) An FMSA that is not a PSO must document the following to demonstrate compliance with subsections (a), (c) and (d) of this section:

(1) the name of the training;

(2) the name of the person who completed the training; and

(3) the date of the training.

(i) An FMSA that is a PSO must document the following to demonstrate compliance with subsections (b) - (d) of this section:

(1) the name of the training;

(2) the name of the person who completed the training; and

(3) the date of the training.

(j) A CDS employer whose FMSA is not a PSO must document the following to demonstrate compliance with subsections (a), (c) and (e) of this section:

(1) the name of the training;

(2) the name of the person who completed the training; and

(3) the date of the training.

(k) A CDS employer whose FMSA is a PSO must document the following to demonstrate compliance with subsections (b), (c) and (e) of this section:

(1) the name of the training;

(2) the name of the person who completed the training; and

(3) the date of the training.

(l) If a program provider or an FMSA does not comply with subsections (a), (c), or (d) of this section, HHSC or an MCO may require the program provider or FMSA to complete a corrective action plan.

(m) If a PSO does not comply with subsection (b) of this section, HHSC or an MCO may require the PSO to complete a corrective action plan.

(n) If a program provider that is not an FMSA does not comply with subsection (e) of this section, HHSC or an MCO may require the program provider to complete a corrective action plan.

(o) If a CDS employer whose FMSA is not a PSO does not comply with subsections (a), (c), and (e), an FMSA may require the CDS employer to complete a corrective action plan.

(p) If a CDS employer whose FMSA is a PSO does not comply with subsections (b), (c) and (e), an FMSA may require the CDS employer to complete a corrective action plan.

§354.4017. Process to Request Approval of a Proposed EVV Proprietary System and Additional Requirements for a PSO.

(a) This section applies to a program provider or FMSA seeking HHSC's approval of a proposed EVV proprietary system. To request HHSC's approval of a proposed EVV proprietary system, a program provider or FMSA must comply with the onboarding process described in the EVV Policy Handbook, which includes:

(1) completing and submitting the EVV Proprietary System Request Form; and

(2) participating in an operational readiness review session.

(b) HHSC approves a proposed EVV proprietary system if a program provider or FMSA:

(1) demonstrates that the proposed EVV proprietary system complies with:

(A) the EVV Policy Handbook

(B) the EVV Business Rules for Proprietary Systems; and

(C) state and federal laws governing EVV; and

(2) successfully completes the operational readiness review by receiving a score of 100% in the following methods, as described in the EVV Policy Handbook:

(A) certification;

(B) documentation;

(C) demonstration; and

(D) trading partner testing.

(c) A PSO must:

(1) ensure the EVV proprietary system complies with the HHSC EVV Policy Handbook, the EVV Business Rules for Proprietary Systems, and state and federal laws governing EVV;

(2) assume responsibility for the design, development, operation, and performance of the EVV proprietary system;

(3) cover all costs to develop, implement, operate, and maintain the EVV proprietary system;

(4) ensure the accuracy of EVV data collected, stored, and reported by the EVV proprietary system;

(5) assume all liability and risk for the use of the EVV proprietary system;

(6) maintain all data generated by the EVV proprietary system to demonstrate compliance with this subchapter and for general business purposes;

(7) develop training materials on the proprietary system and train HHSC staff and MCO staff;

(8) provide access to all HHSC-approved clock in and clock out methods offered by the PSO to a service provider at no cost to a member, HHSC, an MCO, or HHSC's designated contractor;

(9) ensure the functionality and accuracy of all clock in and clock out methods provided to a service provider;

(10) comply with the process in the HHSC EVV Policy Handbook if transferring EVV proprietary systems; and

(11) notify HHSC, in writing, if:

(A) the EVV proprietary system is not in compliance with the HHSC EVV Policy Handbook, the EVV Business Rules for Proprietary Systems, and state and federal laws governing EVV; or

(B) if the PSO plans to make significant changes to the EVV system.

(d) HHSC may, at its discretion, audit an EVV proprietary system. Such audit may be conducted by a contractor of HHSC.

(e) If HHSC determines that a PSO is not in compliance with subsection (c) of this section, HHSC may, in accordance with the HHSC EVV Policy Handbook:

(1) require the PSO to correct the non-compliance within a time frame specified by HHSC;

(2) reject EVV visit transactions from the proprietary system until HHSC determines the non-compliance is corrected;

(3) cancel the use of the EVV proprietary system if:

(A) the PSO fails to correct the non-compliance within the time frame specified by HHSC; or

(B) the PSO does not respond to a written communication from HHSC about the non-compliance within the time frame specified by HHSC; and

(4) cancel the use of an EVV proprietary system without giving the PSO the opportunity to correct the non-compliance:

(A) if the non-compliance is egregious, as determined by HHSC; or

(B) because of a substantiated allegation of fraud, waste, or abuse by the Office of Inspector General.

§354.4019. Access to EVV System and EVV Documentation.

A program provider and an FMSA must:

(1) allow HHSC and the MCO with which the program provider or FMSA has a contract immediate, direct, and on-site access to the EVV system the program provider or FMSA uses;

(2) at HHSC's request, allow HHSC to review EVV system documentation or obtain a copy of that documentation at no charge to HHSC; and

(3) at the request of an MCO with which an EVV claim is filed, allow the MCO to review EVV system documentation related to the EVV claim or obtain a copy of that documentation at no charge to the MCO.

§354.4021. Additional Requirements.

A program provider, an FMSA, a CDS employer, a service provider, a member, and an MCO must comply with:

(1) applicable state and federal laws, rules, regulations, including the Health Insurance Portability Accountability Act of 1966 at 42 U.S.C. §1320d, et. seq., and regulations adopted under that act at 45 CFR Parts 160 and 164; and

(2) the EVV Policy Handbook.

§354.4023. Sanctions.

(a) HHSC or an MCO may propose to recoup funds paid to a program provider or FMSA as described in:

(1) §354.4009(d) of this subchapter (relating to EVV Visit Transaction and EVV Claim); and

(2) §354.4013(h) of this subchapter (relating to HHSC and MCO Compliance Reviews and Enforcement Actions.

(b) HHSC or an MCO may impose a vendor hold against a program provider or FMSA as described in §354.4013(d) and (g)(3) of this subchapter.

(c) HHSC or an MCO may propose to terminate the contract of program provider or FMSA as described in:

(1) §354.4007(e)(2)(B) of this subchapter (relating to EVV System); and

(2) §354.4013(b)(3) of this subchapter.

§354.4025. Administrative Hearing.

(a) If, as described in this subchapter, HHSC proposes to terminate the contract of a program provider or FMSA, proposes to recoup funds paid to a program provider or FMSA, or imposes a vendor hold on a program provider or FMSA, the program provider or FMSA may request an administrative hearing in accordance with §357.484 of this title (relating to Request for a Hearing).

(b) If, as described in this subchapter, an MCO proposes to terminate the contract of a program provider or FMSA, proposes to recoup funds paid to a program provider or FMSA, or imposes a vendor hold on a program provider or FMSA, the program provider or FMSA may appeal the proposed action in accordance with the MCO's policy.

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 25, 2023.

TRD-202303168
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: October 8, 2023
For further information, please call: (512) 438-5241

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1 TAC §§354.4005, 354.4007, 354.4009, 354.4011, 354.4013

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code, §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Government Code, §531.024172, which provides that the Executive Commissioner of HHSC may adopt rules to implement an electronic visit verification system to electronically verify that personal care services or other services identified by HHSC are provided to Medicaid recipients.

The repeals affect Texas Government Code, §531.0055 and §531.024172 and Human Resources Code, §32.021.

§354.4005. Applicability.

§354.4007. EVV System.

§354.4009. Requirements for Claims Submission and Approval.

§354.4011. Member Rights and Responsibilities.

§354.4013. Additional Requirements.

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

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 121. BEHAVIOR ANALYST

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 121, Subchapter A, §121.1 and §121.10; Subchapter B, §§121.20 - 121.22, 121.27, and 121.30; Subchapter C, §121.65; Subchapter D, §121.71 and §121.75; and Subchapter G, §121.90 and §121.95; new rules at Subchapter B, §121.26; Subchapter D, §§121.70, 121.72 - 121.74; Subchapter E, §§121.76 - 121.81; and Subchapter F, §121.85; and the repeal of existing rules at §§121.23, 121.24, 121.26, 121.50, 121.70, and 121.80 regarding the Behavior Analyst program; and the addition of subchapter titles to the existing chapter. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 121, implement Texas Occupations Code, Chapters 51, 111, and 506.

The Department is proposing amendments to Chapter 121 in response to its required four-year rule review and to reorganize its guidelines for the use of telehealth by behavior analysts. The amendments also update rule provisions to reflect current Department procedures, restructure the existing rules for better organization, and replace outdated rule language.

The Department published a Notice of Intent to Review its behavior analyst rules as part of the four-year rule review required under Government Code §2001.039 in the April 29, 2022, issue of the *Texas Register* (47 TexReg 2575). The Department reviewed these rules and determined that the rules were still essential in implementing the statutory provisions of Texas Occupations Code, Chapter 506, Behavior Analysts. The Commission re-adopted the rules in their existing form in the November 11, 2022, issue of the *Texas Register* (47 TexReg 7567).

The Department received public comments from the Texas Association for Behavior Analysis, Public Policy Group (TxABA PPG) in response to its Notice of Intent to Review. The re-adoption notice stated that the Department would address those public comments along with the suggested changes resulting from the Department's own review in a future proposed rulemaking. The Department initiated that rulemaking following the readoption of the rules at the conclusion of the Rule Review process.

Advisory Board Recommendations

The proposed rules were presented to and discussed by the Behavior Analyst Advisory Board at its meeting on December 1, 2022. The Advisory Board did not make any changes to the proposed rules and voted to recommend that the proposed rules be published in the *Texas Register* for public comment. The proposed rules were published in the January 6, 2023 issue of the *Texas Register* (48 TexReg 9). The Department received public comments from the Texas Medical Association (TMA) in response to that publication of the proposed rules. After the public comment period concluded, the department withdrew the proposed rules to make further amendments and updates, including amendments related to the public comments received, and now re-proposes the rules. The Department's responses to the public comments submitted are specifically addressed in this proposal.

The proposed rules were presented to and discussed by the Behavior Analyst Advisory Board at its meeting on August 15, 2023. The Advisory Board agreed to remove §121.77(b) as unnecessary and made no other changes to the proposed rules. The Advisory Board voted and recommended that the proposed rules with the deletion of §121.77(b) be published in the *Texas Register* for public comment.

SECTION-BY-SECTION SUMMARY

The proposed rules create new Subchapter A, General Provisions.

The proposed rules amend §121.1, Authority, to include Texas Occupations Code, Chapter 111.

The proposed rules amend §121.10, Definitions, to move definitions related to telehealth to Subchapter E, Telehealth. A definition for "applied behavior analysis" is added in response to a comment from TxABA PPG recommending this change. Other amendments clarify terms and remove definitions that are not used throughout the chapter.

The proposed rules create new Subchapter B, Licensing Requirements.

The proposed rules amend outdated language in §121.20, Applications, and relocate provisions to §121.20 from §121.23, Examinations, which was repealed.

The proposed rules amend outdated language in §121.21, Behavior Analyst Licensing Requirements, and relocate provisions to this section from §121.24, Educational Requirements, which was repealed.

The proposed rules amend outdated rule language in §121.22, Assistant Behavior Analyst Licensing Requirements, and move provisions to this section from repealed §121.24, Educational Requirements.

The TxABA PPG in its public comments during the rule review process noted that certification by the Behavior Analyst Certification Board (BACB), or its equivalent, is required to obtain and maintain licensure as a Licensed Behavior Analyst or Licensed Assistant Behavior Analyst. TxABA PPG requested that the department clarify the meaning of equivalent and spell out education and experience requirements of an equivalent certification (proposed §§ 121.20-121.22).

The Department's response is that the Act defines a certifying entity as "the nationally accredited Behavior Analyst Certification Board or another entity that is accredited by the National Commission for Certifying Agencies or the American National Stan-

dards Institute to issue credentials in the professional practice of applied behavior analysis and approved by the department." Further, a behavior analyst or assistant behavior analyst must be certified as a Board Certified Behavior Analyst, a Board Certified Behavior Analyst-Doctoral, or a Board Certified Assistant Behavior Analyst, or have an equivalent certification issued by the certifying entity and meet the requirements specified in §§ 506.252 and 506.253 or 506.254 of the Act, as applicable, and Subchapter B of the rules. Those requirements include a BACB certification or an equivalent certification by an accredited, approved certifying entity, which requires compliance with the certifying entity's educational, examination, professional, ethical, and disciplinary standards.

One need only examine the BACB certification requirements to determine what an equivalent standard should include. Equivalent does not mean identical so evaluation of the certification is necessary. The department has been given the discretion to compare the accreditation and standards of a certifying entity to those of the BACB to approve or disapprove the certification it issues. Individuals who meet the requirements of the approved certifying entity and are issued a credential that has been approved as utilizing standards equivalent to those of the BACB may apply for licensure. The department does not evaluate individuals' qualifications other than to verify that they satisfy the requirements to obtain the license that are provided in the Act and the rules.

Once a certification that has been issued by an approved entity is deemed equivalent, then those who have obtained that certification may apply without having their certification re-examined. A certification issued by an approved certifying entity may be reevaluated at any time to ascertain that the standards for its issuance continue to be equivalent to those of the BACB, which may change over time. The discretion provided to the Department to evaluate certifying entities and the certifications they issue provides flexibility to evaluate the credential as a whole, given that each particular standard or requirement is unlikely to be identical to those of the BACB. The Department reserves the opportunity to elaborate more specifically regarding potential certifying entities and the standards for the certifications they issue as evaluation of additional certifying entities occurs, but has not specified equivalent requirements at this time.

The proposed rules repeal §121.23, Examinations. The text is relocated to the proposed §121.20.

The proposed rules repeal §121.24, Educational Requirements. The text is relocated to the proposed §§121.21-121.22.

The proposed rules repeal §121.26, Renewal, and replace it with new proposed §121.26, Renewal, due to extensive changes. The proposed section clarifies the requirements for renewal, including term of license, amends outdated rule language, and removes a provision preventing renewal of the license of a person who is in violation of rules or law at the time of renewal.

The proposed rules amend §121.27, Inactive Status by updating language and adding that there is no fee to move from an active to inactive license status.

The proposed rules amend §121.30, Exemptions, to align the rule with statutory provisions.

The proposed rules repeal §121.50, Reporting Requirements. Text is updated and relocated to the proposed new §121.74, Reporting Requirements.

The proposed rules create new Subchapter C, Behavior Analyst Advisory Board.

The proposed rules amend §121.65, Membership, to update language.

The proposed rules create new Subchapter D, Responsibilities of License Holders.

The proposed rules repeal §121.70, Administrative Practice Responsibilities of License Holders, and replace it with new proposed §121.70, Administrative Practice Responsibilities of License Holders, due to extensive changes. The proposed rules remove duplicative provisions from the section that are included in §121.95; move license display requirements to new §121.72; move recordkeeping requirements to §121.73; and relocate telehealth requirements to Subchapter E, Telehealth.

The proposed rules amend §121.71, Professional Services Practice Responsibilities of License Holders, to update language and to move telehealth requirements to Subchapter E, Telehealth.

The proposed rules add new §121.72, Display of License, which relocates license display provisions and limitations from §121.70.

The proposed rules add new §121.73, Recordkeeping Requirements, which relocates requirements from §121.70 and clarifies who owns and is responsible for maintaining patient records. In its public comments the TMA recommended that the reference to "providers" in §121.73(a)(2) be replaced with "license holder." The department has made this change because the term "provider" is used only in Subchapter E, Telehealth, to refer to license holders who provide telehealth services. In the balance of the rules, as in §121.73(a)(2), the term "license holder" is appropriate.

The proposed rules add new §121.74, Reporting Requirements, which relocates the rules from repealed §121.50 with updates.

The proposed rules amend outdated language in §121.75, Code of Ethics.

The proposed rules create new Subchapter E, Telehealth.

The proposed rules add new §121.76, Definitions Relating to Telehealth, which relocates telehealth definitions from §121.10 and aligns them with other department health professions programs. The TMA in its public comments in response to the earlier proposal of these rules requested that the proposed definition of "telehealth" in §121.76 be amended to incorporate the limitations contained in the underlying definition in Chapter 111, Occupations Code. Specifically, the TMA recommended the following definition:

Telehealth--The use of telecommunications and telecommunications technologies for the exchange of information from one site to another for the provision of behavior analysis services to a client from a provider, including for assessments, interventions, or consultations, to the extent permitted by the definition of "telehealth service" in Occupations Code Chapter 111.001(3) (citation corrected).

The department agrees that behavior analysis license holders, like all health professionals providing telehealth services in Texas, are subject to Occupations Code, Chapter 111, including the definition of "telehealth service." The Act does not define the term but Chapter 51 directly refers to the definition in Chapter 111. The definition in the rule has been amended to more

closely align with the Chapter 111 definition while remaining tailored to the practice of telehealth by behavior analysis license holders. In addition, Chapter 111 has been added to the citation of statutory authority under which the behavior analyst rules are promulgated.

The proposed rules add new §121.77, Service Delivery Methods, which relocates delivery methods defined in §121.10 and §121.70 and aligns them with other department health professions programs.

The proposed rules add new §121.78, Technology and Equipment Requirements, which relocates telecommunications requirements related to equipment and competencies from §§121.70-121.71.

The proposed rules add new §121.79, License Holder Responsibilities for Providing Telehealth Services and Using Telehealth, which relocates responsibilities for providers from §§121.70-121.71 and aligns them with other department health professions programs.

The proposed rules add new §121.80, Use of Facilitators with Telehealth, which moves facilitator requirements for telehealth from §121.71.

The proposed rules add new §121.81, Client Contacts and Communications, and relocates requirements regarding notifications to clients and complaint information from §121.70.

The proposed rules repeal §121.80, Fees, which has been moved to new Subchapter F.

The proposed rules create new Subchapter F, Fees.

The proposed rules add new §121.85, Fees, relocating the text from §121.80 without substantive changes.

The proposed rules create new Subchapter G, Enforcement.

The proposed rules amend §121.90, Basis for Disciplinary Action, to include a reference to the Chapter 100 rules and to provide more concise language for disciplinary actions that can be taken against a person.

The proposed rules amend §121.95, Complaints, adding a requirement to include an authorized representative in the complaint process and updating rule language.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs, reductions in costs, or foreseeable implications relating to costs to the state or local governments as a result of enforcing or administering the proposed rules.

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local governments, or foreseeable implications relating to revenues, as a result of enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be more clear and understandable rules, and more effective and efficient regulation of behavior analysts and assistant behavior analysts, which enhances the health, safety, and welfare of the public.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

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

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

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

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

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rules do not create or eliminate a government program.

2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.

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

4. The proposed rules do not require an increase or decrease in fees paid to the agency.

5. The proposed rules do not create a new regulation.

6. The proposed rules expand, limit, or repeal an existing regulation. The proposed rules expand the definitions for telehealth and telecommunications.

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

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

TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rules and the proposed rules

do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

PUBLIC COMMENTS

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

16 TAC §§121.23, 121.24, 121.26, 121.50, 121.70, 121.80

STATUTORY AUTHORITY

The proposed repeals are proposed under Texas Occupations Code, Chapters 51, 111, and 506, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 111, and 506. No other statutes, articles, or codes are affected by the proposed rules.

§121.23. Examination.

§121.24. Educational Requirements.

§121.26. Renewal.

§121.50. Reporting Requirements.

§121.70. Administrative Practice Responsibilities of License Holders.

§121.80. Fees.

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 25, 2023.

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Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
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For further information, please call: (512) 475-4879

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SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §121.1, §121.10

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51, 111, and 506, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 111, and 506. No other statutes, articles, or codes are affected by the proposed rules.

§121.1. Authority.

This chapter is promulgated under the authority of Texas Occupations Code, Chapters 51, 111, and 506.

§121.10. Definitions.

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

(1) (No change.)

(2) Advertising--The offer to perform behavior analysis services by an individual or [~~solicitation for~~] business, including utilizing the titles "licensed behavior analyst" or "licensed assistant behavior analyst."

(3) - (4) (No change.)

(5) Applied behavior analysis - the practice of applied behavior analysis is defined and described in the Act, §506.003.

[~~(5) Asynchronous telehealth-- Store-and-forward telehealth practice including the transmission of images or data when the data transfer does not occur in real-time~~].

(6) Authorized representative--A person or entity that is legally authorized to represent the interests of a client and [~~to~~] perform functions including making decisions about behavior analysis services.

(7) Behavior Analyst Certification Board (BACB)--a certifying entity for persons practicing behavior analysis.

(8) Client--A person who is:

(A) an individual receiving behavior analysis services from a license holder;

(B) an authorized representative of the individual receiving behavior analysis services; or

(C) an individual, institution, school, school district, educational institution, agency, firm, corporation, organization, government or governmental subdivision, business trust, estate, trust, partnership, association, or any other legal entity not receiving behavior analysis services for its own treatment purposes.

[~~(8) Client--A person who is: receiving behavior analysis services from a license holder for the person's own treatment purposes, or a person or entity who is not receiving behavior analysis services from a license holder for their own treatment purposes including:~~]

[~~(A) an authorized representative of the person receiving behavior analysis services for the person's own treatment purposes; or~~]

[~~(B) an individual, institution, school, school district, educational institution, agency, firm, corporation, organization, government or governmental subdivision, business trust, estate, trust, partnership, association, or any other legal entity.~~]

[~~(9) Client site--The physical location of a client at the time behavior analysis services are practiced through synchronous or asynchronous telehealth. Also termed the origination site.~~]

(9) [~~(10)~~] Commission--The Texas Commission of Licensing and Regulation.

(10) [~~(11)~~] Department--The Texas Department of Licensing and Regulation.

(11) [~~(12)~~] Direct observation--A method of data collection that consists of observing the object of study in a particular situation or environment.

[~~(13) Direct supervision--Supervision of a person who is performing behavior analysis services with a client.~~]

(12) [~~(14)~~] Executive director--The executive director of the department.

[~~(15) Facilitator--An individual physically present with a client who assists with the delivery of behavior analysis services at the direction of a behavior analyst or assistant behavior analyst.~~]

(13) [~~(16)~~] Indirect supervision--Supervision of a person who performs behavior analysis services but which does not occur when services are being provided to a client. This may include behavioral skills training and delivery of performance feedback; modeling technical, professional, and ethical behavior; guiding behavioral case conceptualization, problem-solving, and decision-making repertoires; review of written materials such as behavior programs, data sheets, or reports; oversight and evaluation of the effects of behavioral service delivery; and ongoing evaluation of the effects of supervision.

(14) [~~(17)~~] License--A license issued under the Act authorizing a person to use the title "licensed behavior analyst" or "licensed assistant behavior analyst" or to practice behavior analysis.

(15) [~~(18)~~] License holder--A person who has been issued a license in accordance with the Act to use the title "licensed behavior analyst" or "licensed assistant behavior analyst" or to practice behavior analysis.

(16) [~~(19)~~] Multiple relationship--A personal, professional, business, or other type of interaction by a license holder with a client or with a person or entity involved with the provision of behavior analysis services to a client that is not related to, or part of, the behavior analysis services.

[~~(20) Provider--An individual who holds a current, renewable, behavior analyst or assistant behavior analyst license under this chapter, or who is authorized to provide behavior analysis services.~~]

[~~(21) Provider site--The physical location of a provider at the time behavior analysis services are furnished through synchronous or asynchronous telehealth. Also termed the distance site.~~]

(17) [~~(22)~~] Service agreement--A signed written contract for behavior analysis services. A service agreement includes responsibilities and obligations of all parties and the scope of behavior analysis services to be provided. A service agreement may be identified by other terms including treatment agreement, Memorandum of Understanding (MOU), or Individualized Education Program (IEP).

(18) [~~(23)~~] Supervision--Supervision of a person who performs behavior analysis services, and may include both direct and indirect supervision. A license holder may engage in direct supervision or indirect supervision in-person and on-site, through telehealth, or in another manner approved by the license holder's certifying entity.

[~~(24) Synchronous telehealth--telehealth services that require transmission of images, video, or data through a communication link for real-time interaction to take place.~~]

[~~(25) Telecommunications--Interactive communication by two-way transmission using telecommunications technology, including, but not limited to sound, visual images, or computer data.~~]

[~~(26) Telecommunications technology--Computers and equipment used or capable of use for purposes of telecommunications, other than analog telephone, email, or facsimile technology and equipment. Telecommunications technology includes, but is not limited to:~~]

[~~(A) compressed digital interactive video, audio, or data transmission;~~]

[~~(B) clinical data transmission using computer imaging by way of still-image capture, storage and forward; and~~]

[~~(C) other technology that facilitates the delivery of telehealth services.~~]

[~~(27) Telehealth service--The meaning of "telehealth service" is the same as defined in Occupations Code Chapter 111.~~]

(19) Telehealth--See definitions in Subchapter E. Telehealth.

(20) [~~(28)~~] Treatment plan--A written behavior change program for an individual client. A treatment plan includes consent, objectives, procedures, documentation, regular review, and exit criteria. A treatment plan may be identified by other terms including Behavior Intervention Plan, Behavior Support Plan, Positive Behavior Support Plan, or Protocol.

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SUBCHAPTER B. LICENSING REQUIREMENTS

16 TAC §§121.20 - 121.22, 121.26, 121.27, 121.30

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51, 111, and 506, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 111, and 506. No other statutes, articles, or codes are affected by the proposed rules.

§121.20. Applications.

(a) Unless otherwise indicated, an applicant [~~applicants~~] for a license must submit all required information [~~on department-approved forms or~~] in a manner specified by the department.

(b) An applicant [~~Applicants~~] must submit the following:

(1) (No change.)

(2) the applicant's certification number by a behavior analyst certifying entity or other documentation of current certification by a behavior analyst certifying entity [~~, as~~] approved by the department; and

(3) the fee required under §121.85 [§121.80].

(c) Upon request, the [The] department may require an applicant to submit additional information or documentation for evaluation of an applicant's qualifications, including the following:

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

(8) documentation demonstrating passage of the Board Certified Behavior Analyst examination or the Board Certified Assistant Behavior Analyst examination, as applicable, or an equivalent examination in applied behavior analysis offered by the certifying entity [successful completion of applicable examination requirements, including a pass/fail report];

(9) - (11) (No change.)

(d) - (g) (No change.)

§121.21. Behavior Analyst Licensing Requirements.

(a) To qualify for licensure as a behavior analyst, a person must:

(1) hold current certification as a Board Certified Behavior Analyst or a Board Certified Behavior Analyst-Doctoral or equivalent, issued by the Behavior Analyst Certification Board or other certifying entity [its equivalent as] approved by the department; [and]

(2) be in compliance with all professional, ethical, and disciplinary standards established by the certifying entity; and [.]

(3) meet the educational requirements of the certifying entity for the Board Certified Behavior Analyst, the Board Certified Behavior Analyst-Doctoral, or an equivalent standard of the certifying entity approved by the department.

(b) A person [Persons] who is [are] subject to or has [have] received a disciplinary action by the certifying entity may be ineligible for a license.

(c) A person [Persons] who holds a [hold] current certification by the certifying entity but who does [do] not hold a current license may not:

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

(d) A person [Persons] who holds [hold] a current Texas license may use the title "licensed behavior analyst" or a reasonable abbreviation of the title that is accurate and not misleading, including "LBA," "L.B.A.," "TXLBA," or "TX. L.B.A."

(e) (No change.)

§121.22. Assistant Behavior Analyst Licensing Requirements.

(a) To qualify for licensure as an assistant behavior analyst, a person must:

(1) hold current certification as a Board Certified Assistant Behavior Analyst or equivalent, issued by the Behavior Analyst Certification Board or other certifying entity [its equivalent as] approved by the department;

(2) be in compliance with all professional, ethical, and disciplinary standards established by the certifying entity; [and]

(3) be in compliance with the applicable supervision requirements of the certifying entity at all times when practicing behavior analysis; and[.]

(4) meet the educational requirements of the certifying entity for the Board Certified Assistant Behavior Analyst or an equivalent standard of the certifying entity approved by the department.

(b) A person [Persons] who is [are] subject to or has [have] received a disciplinary action by the certifying entity may be ineligible for a license.

(c) A person [Persons] who holds a [hold] current certification by the certifying entity but who does [do] not hold a current license may not:

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

(d) A person [Persons] who holds [hold] a current Texas license may use the title "licensed assistant behavior analyst" or a reasonable abbreviation of the title that is accurate and not misleading, including "LaBA," "L.a.B.A.," "TXLaBA," or "TX. L.a.B.A." The letter "a" representing the word "assistant" may not be capitalized unless the abbreviation clearly represents the word "assistant," including "Lic. Asst. BA," "TX L. Assist. B.A." or similar.

(e) (No change.)

§121.26. Renewal.

(a) A behavior analyst and assistant behavior analyst license is valid for two years from the date of issuance and may be renewed biennially.

(b) A license holder is responsible for submitting all required documentation and information and paying the renewal application fee before the expiration date of the license.

(c) To renew a license, a license holder must:

(1) submit a completed renewal application in a manner prescribed by the department;

(2) provide a current certification number from the BACB or evidence of certification by a certifying entity approved by the department;

(3) successfully pass a criminal history background check; and

(4) submit the fee required under §121.85.

(d) The license holder must complete the human trafficking prevention training required under Texas Occupations Code, Chapter 116, and provide proof of completion as prescribed by the department.

(e) A person whose license has expired may not provide or offer to provide behavior analysis services or use the title or represent or imply that the person has the title of "licensed behavior analyst" or "licensed assistant behavior analyst" and may not use any variation of those titles.

(f) A person whose certification is on inactive status with the certifying entity may renew a license that is on inactive status with the department if the person is in compliance with the requirements for inactive status with the certifying entity.

(g) A person whose certification is on inactive status with the certifying entity may not renew a license that is on active status with the department.

§121.27. Inactive Status.

(a) To change a license to inactive status, an applicant must submit a complete application in a manner prescribed by the department [on a department-approved form]. No fee is required to change from active status to inactive status.

(b) A person whose license is on inactive status may not:

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

(3) participate in a supervision relationship with another license holder or unlicensed person [~~unless an active license is not required for the license holder's activity~~]; or

(4) (No change.)

(c) - (d) (No change.)

(e) To change from an inactive license status to an active license status, a person must:

(1) submit a complete application in a manner prescribed by the department [~~on a department-approved form~~];

(2) pay the fee required under §121.85 [~~§121.80(b)(6)~~]; and

(3) (No change.)

§121.30. Exemptions.

(a) (No change.)

(b) A person who is no longer eligible for an exemption under §§506.051 - 506.059 of the Act must [~~Persons who are providing services for which a license is required under the Act or this chapter but who are not certified by a certifying entity may be required to~~] become certified by a certifying entity approved by the department and obtain a license under this chapter [~~in order~~] to continue to provide services.

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SUBCHAPTER C. BEHAVIOR ANALYST ADVISORY BOARD

16 TAC §§121.65 - 121.69

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51, 111, and 506, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 111, and 506. No other statutes, articles, or codes are affected by the proposed rules.

§121.65. [~~Behavior Analyst Advisory Board;~~] Membership

(a) The Behavior Analyst Advisory Board shall be appointed under and governed by the Act and this subchapter [~~section~~]. The advisory board is established under the authority of Occupations Code, §506.101.

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

§121.66. [~~Advisory Board:~~] Duties.

(No change.)

§121.67. [~~Advisory Board:~~] Terms; Vacancies.

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

§121.68. [~~Advisory Board:~~] Officers.

(a) - (b) (No change.)

§121.69. [~~Advisory Board:~~] Meetings.

(a) - (b) (No change.)

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SUBCHAPTER D. RESPONSIBILITIES OF LICENSE HOLDER

16 TAC §§121.70 - 121.75

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51, 111, and 506, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 111, and 506. No other statutes, articles, or codes are affected by the proposed rules.

§121.70. Administrative Practice Responsibilities of License Holders.

(a) Licenses issued by the department remain the property of the department and shall be surrendered to the department on demand.

(b) A license holder shall:

(1) inform the department of any violations of this chapter or the Act;

(2) promptly provide upon request any documents or information that satisfactorily demonstrates to the department the license holder's qualifications for certification by the certifying entity or for licensure by the department;

(3) report, in accordance with §121.74, to the department any fact that may affect a license holder's qualifications to hold a certification or license;

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

(5) not interfere with a department investigation or disciplinary proceeding in any way, including by misrepresentation or omission of facts to the department or using threats or harassment against any person;

(6) comply with any order issued by the commission or the executive director that relates to the license holder;

(7) promptly provide upon request documents, including treatment plans or service agreements, to demonstrate compliance with the Act, this chapter, or an order of the commission;

(8) comply with applicable professional and ethical standards and requirements including those of the license holder's certifying entity when creating a written agreement for services;

(9) upon revision or amendment of a written agreement for services, obtain the signatures of all parties;

(10) not delegate any services, functions, or responsibilities requiring professional competence to a person not competent or not properly credentialed. A license holder in private practice is responsible for the services provided by unlicensed persons employed or contracted by the license holder; and

(11) use electronic methods to create, amend, or sign documents, and accept signatures of clients on documents related to the provision of behavior analysis services, only in accordance with applicable law.

§121.71. Professional Services Practice Responsibilities of License Holders.

(a) A license holder shall:

(1) enter into a service agreement with a client, as defined in §121.10, when behavior analysis services are to be provided;

(A) (No change.)

(B) A behavior analyst shall create a written treatment plan when the service agreement provides for delivering treatment to an individual.

(C) (No change.)

(2) - (3) (No change.)

(4) comply with all applicable requirements of the license holder's certifying entity, including the BACB Ethics Code for Behavior Analysts [~~Professional and Ethical Compliance Code for Behavior Analysts~~], when entering into service agreements and providing behavior analysis services.

(b) - (c) (No change.)

~~[(d) Professional Services Practice Responsibilities: Telehealth.]~~

~~[(1) Except to the extent it imposes additional or more stringent requirements, this subsection does not affect the applicability of any other requirement or provision of law to which a person is subject under the Act, this chapter, or other law, or by the person's certifying entity, when the person is functioning as a provider of telehealth services.]~~

~~[(2) The requirements of this section apply to the use of telehealth by behavior analysts and assistant behavior analysts licensed under this chapter.]~~

~~[(3) A license holder shall provide the same quality of services via telehealth as is provided during in-person sessions. A telehealth provider shall maintain a focus on evidence-based practice and identify appropriate meaningful outcomes for a client. When an established telehealth procedure is not available, a license holder shall notify a client or multi-disciplinary team, as appropriate, that the effectiveness of the procedure has not yet been established for the method, manner, or mode of treatment.]~~

~~[(4) A telehealth provider shall notify a client or multi-disciplinary team, as appropriate, of the conditions of telehealth services, including, but not limited to, the right to refuse telehealth services, options for service delivery, differences between in-person and remote service delivery methods, and instructions for filing and resolving complaints.]~~

~~[(A) A telehealth provider shall obtain client consent before services may be provided through telehealth.]~~

~~[(B) A provider shall consider relevant factors including the client's behavioral, physical, and cognitive abilities in determining the appropriateness of providing services via telehealth.]~~

~~[(C) If a client previously consented to in-person services, a telehealth provider shall obtain updated consent to include telehealth services.]~~

~~[(5) Telehealth providers shall not provide services by correspondence only, e.g., mail, email, or faxes, although these may be used as adjuncts to telehealth.]~~

~~[(6) The initial contact between a license holder and a client may be at the same physical location or through telehealth, as deemed appropriate by the license holder.]~~

~~[(7) Telehealth providers shall comply with all laws, rules, and certifying entity requirements governing the maintenance of client records, including client confidentiality requirements, regardless of the state where the records of any client within this state are maintained.]~~

~~[(8) A telehealth provider shall be sensitive to cultural and linguistic variables that affect the identification, assessment, treatment, and management of a client when providing services through telehealth.]~~

~~[(9) Supervision undertaken through telehealth must meet the standards of the certifying entity.]~~

~~[(10) Subject to the requirements and limitations of this section, a telehealth provider may utilize a facilitator at a client site to assist the provider in rendering telehealth services.]~~

~~[(11) A telehealth provider, before allowing a facilitator to assist a provider in rendering telehealth services, shall ascertain a facilitator's qualifications, training, and competence, as appropriate and reasonable, for each task a provider directs a facilitator to perform, and in the methodology and equipment a facilitator is to use.]~~

~~[(12) A facilitator may perform at a client site only the following tasks:]~~

~~[(A) a task for which a facilitator holds and acts in accordance with any relevant license, permit, or authorization required or exemption available under the Texas Occupations Code to perform the task; and]~~

~~[(B) those physical, administrative, and other tasks for which a telehealth provider determines a facilitator is competent to perform in connection with the rendering of behavior analysis services for which no license, permit, or authorization under the Texas Occupations Code is required or to which an exemption applies.]~~

~~[(13) A telehealth provider shall be able to see and hear a client and a facilitator, if used, via telecommunications technology in synchronous, real-time interactions, even when receiving or sending data and other telecommunication transmissions, when providing telehealth services.]~~

~~[(14) A telehealth provider shall not render telehealth services to a client if the presence of a facilitator is required for safe and effective service to a client and no qualified facilitator is available.]~~

[(15) A telehealth provider shall document the provider's telehealth services to the same standard as in-person services.]

§121.72. Display of License.

(a) A license holder shall display the current original license certificate issued by the department in the primary location of practice, if any, or in the license holder's business office.

(b) In the absence of a primary location of practice or business office, or when the license holder is employed in multiple locations, the license holder shall carry a current license identification card issued by the department.

(c) A license holder shall not:

(1) display a photocopy or other reproduction of a license certificate or identification card; or

(2) alter a license certificate or identification card.

§121.73. Recordkeeping Requirements.

(a) A license holder shall maintain legible and accurate records of behavior analysis services rendered.

(1) Records are the responsibility and property of the entity or individual who owns the practice or the practice setting.

(2) A license holder shall comply with all laws, rules, and certifying entity requirements governing the maintenance of client records, including client confidentiality requirements, regardless of the state where the records of any client within this state are maintained.

(3) Records created as a result of treatment in a school setting shall be maintained as part of the student's permanent school record.

(b) A license holder practicing in an educational setting, school, learning center, or clinic shall comply with the recordkeeping requirements of the service setting or with the retention requirements of the certifying entity, if the latter are more stringent.

(c) Records shall be maintained for a minimum of the longer of:

(1) seven years following the termination of behavior analysis services;

(2) seven years following the date on which a minor client reaches the age of 22; or

(3) the retention period required by the certifying entity.

§121.74. Reporting Requirements.

(a) A license holder shall report the following in a manner prescribed by the department within ten days:

(1) Surrender, voluntary termination, or expiration of the license holder's certification;

(2) Commencement of inactive status of the license holder's certification;

(3) Limitation on or termination of the license holder's certification;

(4) Suspension, probation, reprimand, or any other discipline or revocation of the license holder's certification;

(5) A violation by the license holder of the certifying entity's requirements, the Act, this chapter, or an order of the commission;

(6) The license holder's placement on deferred adjudication or criminal conviction, other than a Class C misdemeanor traffic offense;

(7) The settlement of or judgment rendered in a civil lawsuit filed against the license holder relating to the license holder's professional behavior analysis practice; or

(8) An action against the license holder by a governmental agency or by a licensing or certification body.

(b) A license holder shall report a change in name or contact information to the department within thirty days after the change in a manner prescribed by the department.

§121.75. Code of Ethics.

(a) Individuals certified by the BACB are required to comply with the BACB Ethics Code for Behavior Analysts [Professional and Ethical Compliance Code for Behavior Analysts].

(1) The department may consult the requirements of the certifying entity or the BACB Ethics Code for Behavior Analysts [Professional and Ethical Compliance Code for Behavior Analysts] in the application and enforcement of the ethical standards included in this section.

(2) (No change.)

(b) A license holder [License holders] shall comply with the following ethical standards when providing behavior analysis services. A license holder [All license holders] shall:

(1) - (23) (No change.)

(c) (No change.)

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SUBCHAPTER E. TELEHEALTH

16 TAC §§121.76 - 121.81

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51, 111, and 506, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 111, and 506. No other statutes, articles, or codes are affected by the proposed rules.

§121.76. Definitions Relating to Telehealth.

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

(1) Client site--The physical location of the client at the time that telehealth services are being provided.

(2) Facilitator--An individual physically present with a client who assists with the delivery of behavior analysis services through telehealth at the direction of a behavior analyst or assistant behavior analyst.

(3) Provider--An individual who provides telehealth services and holds a current:

(A) behavior analyst license under Texas Occupations Code §506.253 and §506.255; or

(B) assistant behavior analyst license under Texas Occupations Code §§506.254 - §506.255.

(4) Provider site--The physical location of the provider at the time the telehealth services are provided that is distant or remote from the client site.

(5) Telecommunications--Interactive communication of information at a distance by concurrent two-way transmission using telecommunications technology, including, without limitation, sound, visual images, and/or computer data, between the client site and the provider site, and required to occur without a change in the form or content of the information, as sent and received, other than through encoding or encryption of the transmission itself for purposes of and to protect the transmission.

(6) Telecommunications technology--Computers, smart phones, and equipment, other than analog telephone, email, or facsimile technology and equipment, used or capable of use for purposes of telecommunications. For purposes of this subchapter, the term includes, without limitation:

(A) compressed digital interactive video, audio, or data transmission;

(B) clinical data transmission using computer imaging by way of still-image capture, storage and forward;

(C) smart phones, or any audio-visual, real-time, or two-way interactive communication system; and

(D) other technology that facilitates the delivery of telehealth services.

(7) Telehealth--The use of telecommunications or telecommunications technology for the exchange of information from one site to another for the provision of behavior analysis services to a client from a provider.

(8) Telehealth services--The application of telecommunications technology to deliver behavior analysis services to a client who is physically located at a site other than the site where the provider is located.

§121.77. Service Delivery Models.

(a) Telehealth services may be delivered in a variety of ways, including, but not limited to:

(1) the store-and-forward model/electronic transmission which is an asynchronous electronic transmission of stored clinical data from one location to another;

(2) the clinician interactive model which is a synchronous, real-time interaction between the provider and client that may occur via telecommunication links; and

(3) the self-monitoring/testing model which occurs when the client receiving the services provides data to the provider without a facilitator present at the site of the client.

(b) A provider shall not provide services by correspondence only, e.g., mail, email, or facsimile, although these may be used as adjuncts to telehealth.

§121.78. Technology and Equipment Requirements.

(a) A provider shall use only telecommunications technology, as defined in this subchapter, to provide telehealth services. Modes of communication that do not utilize such telecommunications technology, including analog telephone, mail, email, or facsimile may be used only as adjuncts.

(b) A provider shall utilize telecommunications technology and other equipment only if:

(1) the provider is competent to use the equipment as part of the provider's telehealth services;

(2) the telecommunications technology and equipment located at the client site and at the provider site are:

(A) appropriate to the telehealth services to be provided and in good working order; and

(B) are of sufficient quality to allow the provider to deliver equivalent service and quality to the client as if those services were provided in person at the same physical location.

(3) the provider is able to see and hear the client and the facilitator, if used, via telecommunications technology in synchronous, real-time interactions, even when receiving or sending data and other telecommunication transmissions, when providing telehealth services; and

(4) the quality of electronic transmissions shall be adequate for the provision of an individualized client's telehealth service.

(c) A provider shall ensure that communications occur without a change in the form or content of the information, as sent and received, other than through encoding or encryption of a transmission itself for purposes of and to protect the transmission.

§121.79. License Holder Responsibilities for Providing Telehealth Services and Using Telehealth.

(a) Applicability.

(1) Except where noted, this subchapter applies to behavior analysts and assistant behavior analysts, as authorized under this subchapter.

(2) Except to the extent it imposes additional or more stringent requirements, this subchapter does not affect the applicability of any other requirement or provision of law to which an individual is otherwise subject under this chapter or other law.

(b) Licensure and Scope of Practice.

(1) An individual shall not provide telehealth services to a client in the State of Texas, unless the individual is licensed by the department and qualifies as a provider, as that term is defined in this subchapter, or is otherwise legally authorized to do so.

(2) A provider may provide only those telehealth services that are within the course and scope of the provider's license and competence and delivered in accordance with the requirements of that license and pursuant to the terms and conditions set forth in this chapter.

(3) A provider may engage in direct observation, direct supervision, or indirect supervision in-person and on-site, through telehealth, or in another manner approved by the provider's certifying entity. Supervision provided through telehealth must meet the standards of the certifying entity.

(c) Competence and Standard of Practice; Code of Ethics.

(1) A provider shall be competent in both the type of services provided and the methodology and equipment used to provide the service.

(2) A provider shall comply with the code of ethics and scope of practice requirements in this chapter when providing telehealth services.

(3) The scope, nature, and quality of the services provided via telehealth shall be the same as the services provided during in-person sessions.

(4) A provider shall determine whether a particular service or procedure is appropriate to be provided via telehealth. A provider shall maintain a focus on evidence-based practice and identify appropriate meaningful outcomes for a client. When an established telehealth procedure is not available, the provider shall notify the client or multi-disciplinary team, as appropriate, that the effectiveness of the procedure has not yet been established for the method, manner, or mode of treatment.

(5) Documentation of telehealth services shall include documentation of the date and nature of services performed by the provider through telehealth and the assistive tasks of the facilitator, if used.

(6) A provider shall:

(A) consider relevant factors including the client's behavioral, physical, and cognitive abilities in determining the appropriateness of providing services via telehealth;

(B) be aware of the client's level of comfort with the technology being used as part of the telehealth services; and

(C) be sensitive to cultural and linguistic variables that affect the identification, assessment, treatment, or management of a client when providing services through telehealth.

§121.80. Use of Facilitators with Telehealth.

(a) Subject to the requirements and limitations of this subchapter, a provider may utilize a facilitator at the client site to assist the provider in rendering telehealth services.

(b) A provider shall document whether a facilitator is used in providing telehealth services. If a facilitator is used, the provider shall document the tasks in which the facilitator provided assistance.

(c) Before allowing a facilitator to assist the provider in providing telehealth services, the provider shall ascertain and document the facilitator's qualifications, training, and competence, as appropriate and reasonable, in:

(1) each task the provider directs the facilitator to perform at the client site; and

(2) the methodology and equipment the facilitator is to use at the client site.

(d) A facilitator may only perform the following tasks at a client site:

(1) a task for which a facilitator holds and acts in accordance with any relevant license, permit, or authorization required or exemption available under the Texas Occupations Code to perform the task; and

(2) those physical, administrative, and other tasks that a provider determines a facilitator is competent to perform in connection with the rendering of behavior analysis services for which no license, permit, or authorization under the Texas Occupations Code is required or to which an exemption applies.

§121.81. Client Contacts and Communications.

(a) A provider shall notify a client, a client's authorized representative, or multi-disciplinary team, as appropriate, of the conditions of telehealth services, including, but not limited to, the right to refuse or discontinue telehealth services, options for service delivery, differences between in-person and remote service delivery methods, and instructions for filing and resolving complaints.

(b) A provider shall obtain client consent before services may be provided through telehealth. If a client previously consented to in-person services, a provider shall obtain updated consent to include telehealth services.

(c) The initial contact between a provider and client may be at the same physical location or through telehealth, as determined appropriate by the provider.

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SUBCHAPTER F. FEES

16 TAC §121.85

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The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 111, and 506. No other statutes, articles, or codes are affected by the proposed rules.

§121.85. Fees.

(a) All fees paid to the department are nonrefundable.

(b) Licensing fees are as follows:

(1) application and initial license, behavior analyst--$165

(2) application and initial license, assistant behavior analyst--$110

(3) renewal, behavior analyst--$165

(4) renewal, assistant behavior analyst--$110

(5) change, active status to inactive status--$0

(6) change, inactive status to active status--$25

(7) renewal of license on inactive status--renewal fees as stated in paragraphs (3) and (4)

(8) license duplicate or replacement--$25

(c) Late renewal fees for licenses issued under this chapter are prescribed under §60.83.

(d) The fee for a dishonored/returned check or payment is the fee prescribed under §60.82.

(e) The fee for a criminal history evaluation letter is the fee prescribed under §60.42.

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

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Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
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For further information, please call: (512) 475-4879

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SUBCHAPTER G. ENFORCEMENT

16 TAC §121.90, §121.95

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51, 111, and 506, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 111, and 506. No other statutes, articles, or codes are affected by the proposed rules.

§121.90. Basis for Disciplinary Action.

(a) This section is authorized under Texas Occupations Code, Chapters 51 and 506.

(1) If a person violates any provision of Texas Occupations Code, Chapters 51, 111, 506, or any other applicable provision, this chapter, or a rule or order of the executive director or commission, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both in accordance with the provisions of the Texas Occupations Code and the associated rules.

(2) The enforcement authority granted under Texas Occupations Code, Chapters 51 and 506, and any associated rules may be used to enforce the Texas Occupations Code and this chapter.

(b) The department may consult the requirements of the certifying entity[,] and the BACB Ethics Code for Behavior Analysts [~~Professional and Ethical Compliance Code for Behavior Analysts,~~] in the application and enforcement of this chapter.

(c) The department will apply the requirements of this section consistent with the requirements, guidance, and interpretations of the certifying entity unless an alternate interpretation is reasonably necessary.

(d) The department may refer or report information to a certifying entity [~~information~~], including complaints, investigations, and violations of Texas law, rules, or orders that are or may be relevant to the qualifications of any person to obtain or maintain a certification.

(e) The commission has adopted rules for health-related programs in Chapter 100 pursuant to Texas Occupations Code §51.2031 and §51.501. Behavior analysis license holders are subject to the Ch. 100 rules, which include provisions related to telehealth.

(f) [~~(e)~~] The commission or the executive director may deny a license, place sanctions on [~~, revoke, suspend, probate, reprimand, or otherwise discipline~~] a license, or impose an administrative penalty[~~,~~] when a person through fraud, misrepresentation, concealment of a material fact, or in violation of the certifying entity's requirements, the Act, or this chapter:

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

§121.95. Complaints.

(a) (No change.)

(b) A license holder shall notify each client or a minor client's authorized representative of the name, mailing address, email address, telephone number, and website of the department for the purpose of directing complaints to the department. A license holder shall display this notification:

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

[~~(c) A license holder shall not make any alteration on official documents issued by the department.~~]

(c) [~~(d)~~] The commission has adopted rules in Chapter 100 [~~of this title~~] related to handling complaints regarding standard of care pursuant to Texas Occupations Code §51.2031.

(d) [~~(e)~~] A qualified person may assist the department in the review and investigation of complaints and is immune from liability related to these activities pursuant to Texas Occupations Code §51.252.

(e) [~~(f)~~] Provisions regarding the confidentiality of complaint and disciplinary information under this chapter are located in Texas Occupations Code §51.254.

(f) [~~(g)~~] The department may disclose a complaint or investigation and all information and materials compiled by the department in connection with the complaint or investigation to a person's certifying entity in accordance with Texas Occupations Code §51.254.

(g) [~~(h)~~] For purposes of this chapter, a health profession is a profession for which the enabling statute is located in Title 3, Texas Occupations Code, or that is determined to be a health profession under other 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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Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 153. SCHOOL DISTRICT PERSONNEL

SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING PROFESSIONAL DEVELOPMENT

19 TAC §153.1011

The Texas Education Agency (TEA) proposes an amendment to §153.1011, concerning the mentor program allotment. The proposed amendment would modify the rule to further define the mentor program allotment as governed by Texas Education Code (TEC), Chapter 21.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 153.1011 describes the requirements for the Mentor Program Allotment, an optional, grant funded program to support mentorship as governed by TEC, §21.458, and detailed in TEC, §48.114. This allotment is for eligible districts that implement a mentorship program in accordance with TEC, §21.458.

The definition of beginning teacher would be modified in subsection (a)(1) so that uncertified beginning teachers may also be assigned mentors.

The proposed amendment to subsection (a)(3) would extend the definition of a mentor teacher to include individuals who have served as classroom teachers as defined by TEC, §5.001. This change would address the mentor teacher shortage concerns reported by districts.

The proposed amendment to subsection (b)(1) would update the mentor selection requirements for districts. New subsection (b)(1)(A) would require districts to prioritize the selection of current classroom teachers and retain documentation of selection processes in order to ensure that districts are prioritizing the selection of qualified mentors who have the most recent classroom experience.

New subsection (b)(1)(B) would introduce requirements that mentor teachers have instructional expertise in the area the beginning teacher is assigned and have classroom experience in the past three years. These changes would ensure that beginning teachers are matched with mentor teachers with recent instructional experience in their content areas.

To alleviate the workload of mentor teachers who currently serve as teachers of record, the proposed amendment to subsection (b)(2)(A) and (B) would reduce the average number of hours a mentor must serve as a teacher of record to be assigned a certain number of beginning teachers.

New subsection (b)(2)(C) would be added to allow mentors who are not currently classroom teachers to be assigned no more than six beginning teachers. Mentor teachers who are not currently classroom teachers would have more time and flexibility to be able to support more beginning teachers.

Subsection (b)(5)(A) would be amended to allow a beginning teacher to observe a highly effective teacher other than their mentor teacher. This change would allow beginning teachers opportunities for observation even if their mentor is not a current classroom teacher.

Subsection (b)(5)(B)(i)(IV) would be amended to add lesson internalization to the topics a mentor teacher may address with a beginning teacher. This addition would support mentor and beginning teachers in districts that have adopted high quality instructional materials.

Subsection (c) would be amended to remove the requirement for the commissioner of education to adopt a funding formula to determine the amount to which approved districts are entitled. Since this requirement is included in TEC, §48.114, this amendment would eliminate redundancy.

The proposed amendment to subsection (d)(1)(B) would increase the number of surveys administered from one to no more than two yearly. This would provide the agency, mentor training providers, and districts more data points throughout the year to continuously improve the implementation of mentoring programs.

FISCAL IMPACT: Emily Garcia, associate commissioner for educator preparation, certification and enforcement, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation by broadening the definition of mentor teacher to include an individual who serves or has served as a classroom teacher and has at least three years of recent classroom teaching experience; adding mentor selection criteria for districts; and adding to the topics a mentor teacher may address with a beginning teacher. The proposed rulemaking would also limit an existing regulation by removing the requirement that the commissioner annually adopt a funding formula for mentor program allotment funding.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Garcia has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to provide school districts with greater flexibility on the assignment of mentor teachers to support beginning

teachers within their district. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would require an additional written report or other paperwork to be completed by a principal or classroom teacher. However, the rule imposes the least burdensome requirement possible to achieve the objective of the rule. Subsection (d)(1)(B) currently requires beginning teachers and mentor teachers for whom funds were used under TEC, §48.114, to complete an annual survey as part of the verification of compliance. The proposed amendment would increase the number of surveys from one to no more than two annually in order to provide the agency, mentor training providers, and districts more data points throughout the year to continuously improve the implementation of mentoring programs.

PUBLIC COMMENTS: The public comment period on the proposal begins September 8, 2023, and ends October 9, 2023. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on September 8, 2023.A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §21.458, which allows districts to assign mentor teachers to work with new teachers, provides requirements around mentor program design and delivery, and requires the commissioner to adopt rules necessary to administer this statute; and TEC, §48.114, which provides a mentor program allotment to be used for funding eligible district mentor training programs; outlines permissible uses of mentor program allotment funds, which include mentor teacher stipends, scheduled release time for mentoring activities, and mentor support through providers of mentor training; and requires the commissioner to adopt a formula to determine the amount to which eligible school districts are entitled.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §21.458 and §48.114.

§153.1011. Mentor Program Allotment.

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

(1) Beginning teacher--A [~~classroom~~] teacher of record in Texas who has less than two years of teaching experience in the subject or grade level to which the teacher is assigned.

(2) Classroom teacher--An educator who is employed by a school district in Texas and who, not less than an average of four hours each day, teaches in an academic instructional setting or a career and technical instructional setting. The term does not include a teacher's aide or a full-time administrator.

(A) For a school district, a classroom teacher, as defined in this paragraph, must hold an appropriate certificate issued by the State Board for Educator Certification and must meet the specifications regarding instructional duties defined in this paragraph.

(B) For an open-enrollment charter school, a classroom teacher is not required to be certified but must meet the qualifications of the employing charter school and the specifications regarding instructional duties defined in this paragraph.

(3) Mentor teacher--An individual who serves or has served as a [~~A~~] classroom teacher in Texas who provides effective support to help beginning teachers successfully transition into the teaching assignment. The term does not include an appraiser as defined by Texas Education Code (TEC), §21.351.

(4) School district--For the purposes of this section, the definition of school district includes open-enrollment charter schools.

(5) Teacher of record--An educator who is employed by a school or district and who teaches in an academic instructional setting or a career and technical instructional setting and is responsible for evaluating student achievement and assigning grades.

(b) Program requirements. In order for a district mentor program to receive funds through the mentor program allotment, as described in Texas Education Code (TEC), §48.114, the program must be approved by the commissioner of education using the application and approval process described in subsection (c) of this section. To be approved by the commissioner, district mentor programs must comply with TEC, §21.458, and commit to meet the following requirements.

(1) Mentor selection. A district [~~To qualify as a mentor teacher, a classroom teacher~~] must:

(A) prioritize the selection of current classroom teachers as mentor teachers using clear selection criteria, protocols, and hiring processes that align with requirements of this paragraph and TEC, §21.458, and retain documentation of such processes locally; and

(B) select mentor teachers who:

(i) [~~(A)~~] complete a research-based mentor and induction training program approved by the commissioner;

(ii) [~~(B)~~] complete a mentor training program provided by the district;

(iii) [~~(C)~~] have at least three complete years of teaching experience with a superior record of assisting students, as a whole, in achieving improvement in student performance. Districts may use the master, exemplary, or recognized designations under TEC, §21.3521, to fulfill this requirement; [~~and~~]

(iv) [~~(D)~~] demonstrate interpersonal skills, instructional effectiveness, and leadership skills ; [~~.~~]

(v) have expertise, to the extent practicable, in effective instructional practices specifically for the grade levels and subjects to which the beginning teacher is assigned; and

(vi) have experience as a classroom teacher in the past three years.

(2) Mentor assignment. School districts must agree to assign no more than:

(A) two beginning teachers to a mentor who serves as a teacher of record for, on average, four or more [~~six~~] hours per instructional day; [~~or~~]

(B) four beginning teachers to a mentor who serves as a teacher of record for, on average, less than four [~~six~~] hours per instructional day ; or [~~.~~]

(C) six beginning teachers to an individual who serves as a full-time mentor.

(3) District mentor training program. A school district must:

(A) provide training to mentor teachers and any appropriate district and campus employees, including [~~such as~~] principals, assistant principals, and instructional coaches, who work with a beginning teacher or supervise a beginning teacher;

(B) ensure that mentor teachers and any appropriate district and campus employees are trained before the beginning of the school year;

(C) provide supplemental training that includes best mentorship practices to mentor teachers and any appropriate district and campus employees throughout the school year, minimally once per semester; and

(D) provide training for a mentor assigned to a beginning teacher who is hired after the beginning of the school year by the 45th day of employment of the beginning teacher.

(4) District roles and responsibilities. A school district must designate a specific time during the regularly contracted school day for meetings between mentor teachers and the beginning teachers they mentor, which must abide by the mentor and beginning teachers' entitled planning and preparation requirements in TEC, §21.404, and the provisions of paragraph (5)(A) of this subsection.

(5) Meetings between mentors and beginning teachers. A mentor teacher must:

(A) meet with each beginning teacher assigned to the mentor not less than 12 hours each semester, with observations of the mentor teacher or other highly effective teachers by the beginning teacher being mentored or observations of the beginning teacher being mentored by the mentor teacher counting toward the 12 hours each semester; and

(B) address the following topics in mentoring sessions with the beginning teacher being mentored:

(i) orientation to the context, policies, and practices of the school district, including:

(I) campus-wide student culture routines;

(II) district and campus teacher evaluation systems;

(III) campus curriculum and curricular resources, including formative and summative assessments; and

(IV) campus policies and practices related to lesson planning or lesson internalization ;

(ii) data-driven instructional practices;

(iii) specific instructional coaching cycles, including coaching regarding conferences between parents and the beginning teacher;

(iv) professional development; and

(v) professional expectations.

(c) Application approval process. The Texas Education Agency (TEA) will provide an application and approval process for school districts to apply for mentor program allotment funding. Funding will be limited based on availability of funds [~~, and, annually, the commissioner shall adopt a formula to determine the amount to which approved districts are entitled~~] . The application shall address the requirements of TEC, §21.458, and include:

(1) the timeline for application and approval;

(2) approval criteria, including the minimum requirements necessary for an application to be eligible for approval; and

(3) criteria used to determine which districts would be eligible for funding.

(d) Ongoing verification of compliance with program requirements.

(1) Each year, participating districts will be required to submit or participate in a verification of compliance with program requirements through a process to be described in the application form. The verification of compliance will include:

(A) an annual compliance report, submitted by the district, attesting to compliance with authorizing statute and commissioner rule. The report is to include the number of beginning teachers for whom the district used funds received under TEC, §48.114; and

(B) surveys administered not more than twice yearly that may include the district's beginning teachers, mentor teachers, and any appropriate district and campus employees who work with beginning teachers [~~an annual survey of the district's beginning teachers and mentor teachers~~] for whom funds were used under TEC, §48.114. The surveys [~~survey~~] will be used to gather data on program implementation and teacher perceptions.

(2) Failure to comply with TEC, §21.458, and this section after receiving an allotment may result in TEA rescinding eligibility of a district's current or future mentor program allotment funding.

(e) Allowable expenditures. Mentor program allotment funds may only be used for the following:

(1) mentor teacher stipends;

(2) release time for mentor teachers and beginning teachers limited to activities in accordance with this section; and

(3) mentoring support through providers of mentor training.

(f) District mentor program review. School districts awarded mentor program allotment funds must agree to submit all information requested by TEA through periodic activity/progress reports, which will occur at least once per year. Reports will be due no later than 45 calendar days after receipt of the information request and must contain all requested information in the format prescribed by the commissioner.

(g) Final decisions. Commissioner decisions regarding eligibility for mentor program allotment funds are final and appeals to the commissioner regarding such decisions will not be considered.

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 28, 2023.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

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CHAPTER 157. HEARINGS AND APPEALS

SUBCHAPTER CC. HEARINGS OF APPEALS ARISING UNDER FEDERAL LAW AND REGULATIONS

19 TAC §157.1082

The Texas Education Agency (TEA) proposes an amendment to §157.1082, concerning a grantee's or subgrantee's opportunity for a hearing in an enforcement arising under federal law and regulations. The proposed amendment would update the citation to the federal regulation applicable to the rule.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 157.1082 describes actions TEA may take if a grantee or subgrantee of a federal grant materially fails to comply with any term of an award. The proposed amendment to §157.1082 would update the federal citation that allows the actions specified in the rule. No substantive changes would be made.

FISCAL IMPACT: Von Byer, general counsel, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: The proposal would ensure that rule language is based on current law. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins September 8, 2023, and ends October 9, 2023. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on September 1, 2023. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/.

STATUTORY AUTHORITY. The amendment is proposed under 2 Code of Federal Regulations, §200.339, which addresses federally required appeal processes associated with enforcement of federal grants.

CROSS REFERENCE TO STATUTE. The amendment implements 2 Code of Federal Regulations, §200.339.

§157.1082. Grantee's or Subgrantee's Opportunity for a Hearing in an Enforcement Action.

(a) The Texas Education Agency (TEA) may take one or more of the following actions specified in 2 [~~34~~] Code of Federal Regulations, §200.339 [~~§80.43(a)~~], as appropriate in the circumstances, if a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a federal statute or regulation as an assurance, in a state plan or application, in a notice of award, or elsewhere:

(1) temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency;

(2) disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance;

(3) wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program;

(4) withhold further awards for the program; or

(5) take other remedies that may be legally available.

(b) In taking enforcement action, TEA shall provide the grantee or subgrantee an opportunity for any hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

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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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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TITLE 22. EXAMINING BOARDS

PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 329. LICENSING PROCEDURE

22 TAC §329.1

The Texas Board of Physical Therapy Examiners proposes amending 22 TAC §329.1. General Licensure Requirements and Procedures to clarify changes in contact information that need to be reported to the board and requests for name changes.

The amendment eliminates reference to an address of record, changes the wording from residential to home address, and adds phone numbers and email addresses to the change of information that a licensee is required to report to the board. Additionally, the amendment clarifies that name changes must be submitted on a form prescribed by the board with the appropriate fee and a copy of legal documentation enacting the name change, and eliminates the requirement of making a name change with the renewal application.

Fiscal Note

Ralph A. Harper, Executive Director of the Executive Council of Physical Therapy & Occupational Therapy Examiners, has determined that for the first five-year period the amendment is in effect there would be no loss of revenue, and there would be no fiscal implication to units of local government as a result of enforcing or administering the rules.

Public Benefits and Costs

Mr. Harper has also determined that for the first five-year period the amendment is in effect the public benefit will be to ensure that the board has updated information on all licensees. There will be no economic cost to licensees who update their contact information, and no increase in cost for name changes on licenses.

Local Employment Economic Impact Statement

The amendment is not anticipated to impact a local economy, so a local employment economic impact statement is not required.

Small and Micro-Businesses and Rural Communities Impact

Mr. Harper has determined that there will be no costs or adverse economic effects to small or micro-businesses or rural communities; therefore, an economic impact statement or regulatory flexibility analysis is not required.

Government Growth Impact Statement

During the first five-year period this amendment is in effect, the impact on government growth is as follows:

(1) The proposed rule amendment will neither create nor eliminate a government program.

(2) The proposed rule amendment will neither create new employee positions nor eliminate existing employee positions.

(3) The proposed rule amendment will neither increase nor decrease future legislative appropriations to the agency.

(4) The proposed rule amendment will neither require an increase nor a decrease in fees paid to the agency.

(5) The proposed amendment will revise an existing rule by clarifying changes in contact information that need to be reported to the board and the process for requesting for name changes on licenses.

(6) The proposed rule amendment will neither repeal nor limit an existing regulation.

(7) The proposed rule amendment will neither increase nor decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule amendment will neither positively nor adversely affect this state's economy.

Takings Impact Assessment The proposed rule amendment will not impact private real property as defined by Tex. Gov't Code §2007.003, so a takings impact assessment under Tex. Gov't Code §2001.043 is not required.

Requirement for Rule Increasing Costs to Regulated Persons

Tex. Gov't Code §2001.0045, Requirement for Rule Increasing Costs to Regulated Persons, does not apply to this proposed rule because the amendments will not increase costs to regulated persons.

Public Comment

Comments on the proposed amendments may be submitted to Karen Gordon, PT Coordinator, Texas Board of Physical Therapy Examiners, 1801 Congress Ave, Suite 10.900, Austin, Texas 78701; email: karen@ptot.texas.gov. Comments must be received no later than 30 days from the date this proposed amendment is published in the *Texas Register.*

Statutory Authority

The amendment is proposed under Texas Occupation Code §453.102, which authorizes the board to adopt rules necessary to implement chapter 453.

Cross-reference to Statute

The proposed amendment implements provisions in Sec. 453.151, Occupations Code that pertains to information maintained by the board.

§329.1. General Licensure Requirements and Procedures

(a) - (f) (No change.)

(g) Changes to licensee information.

(1) Applicants and licensees must notify the board in writing of changes in home, [~~address of record, and residential,~~] mailing, or business addresses and phone numbers and email addresses within 30 days of the change. [~~For a name change at time of renewal, the licensee must submit a copy of the legal document enacting the name change with the renewal application.~~]

(2) A request for name change must be submitted on a form prescribed by the board with the appropriate fee and a copy of legal documentation enacting the name change.

(h) - (i) (No change.)

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 24, 2023.

TRD-202303140
Ralph Harper
Executive Director
Texas Board of Physical Therapy Examiners
Earliest possible date of adoption: October 8, 2023
For further information, please call: (512) 305-6900

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22 TAC §329.6, §329.7

The Texas Board of Physical Therapy Examiners proposes amending 22 TAC §329.6. Licensure by Endorsement and §329.7. Exemptions from Licensure pertaining to military service member exemption pursuant to SB 422 amendment of Sec. 55.0041. RECOGNITION OF OUT-OF-STATE LICENSE OF MILITARY SERVICE MEMBERS AND MILITARY SPOUSES, of Chapter 55, Occupations Code during the 88th Legislative Session.

The amendment is proposed in order to authorize a military service member to engage in the practice of physical therapy without obtaining a license as a physical therapist or physical therapist assistant if the military service member is currently licensed in good standing by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the licensure in this state and the military service member is stationed at a military installation in this state.

Fiscal Note

Ralph A. Harper, Executive Director of the Executive Council of Physical Therapy & Occupational Therapy Examiners, has determined that for the first five-year period the amendment is in effect there would be no loss of revenue, and there would be no fiscal implication to units of local government as a result of enforcing or administering the rules.

Public Benefits and Costs

Mr. Harper has also determined that for the first five-year period the amendment is in effect the public benefit will be increasing consumer access to physical therapy services by reducing regulatory barriers to interstate mobility of qualified military service members. There will be no economic cost to a military service member who qualifies for the exemption from obtaining licensure as a physical therapist or physical therapist assistant.

Local Employment Economic Impact Statement

The amendment is not anticipated to impact a local economy, so a local employment economic impact statement is not required.

Small and Micro-Businesses and Rural Communities Impact

Mr. Harper has determined that there will be no costs or adverse economic effects to small or micro-businesses or rural communities; therefore, an economic impact statement or regulatory flexibility analysis is not required.

Government Growth Impact Statement

During the first five-year period this amendment is in effect, the impact on government growth is as follows:

The proposed rule amendment will neither create nor eliminate a government program.

(2) The proposed rule amendment will neither create new employee positions nor eliminate existing employee positions.

(3) The proposed rule amendment will neither increase nor decrease future legislative appropriations to the agency.

(4) The proposed rule amendment will neither require an increase nor a decrease in fees paid to the agency.

(5) The proposed amendment will revise an existing rule by including military service members as qualifying for an exemption from licensure.

(6) The proposed rule amendment will neither repeal nor limit an existing regulation.

(7) The proposed rule amendment will neither increase nor decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule amendment will neither positively nor adversely affect this state's economy.

Takings Impact Assessment The proposed rule amendment will not impact private real property as defined by Tex. Gov't Code §2007.003, so a takings impact assessment under Tex. Gov't Code §2001.043 is not required.

Requirement for Rule Increasing Costs to Regulated Persons

Tex. Gov't Code §2001.0045, Requirement for Rule Increasing Costs to Regulated Persons, does not apply to this proposed rule because the amendments will not increase costs to regulated persons and are necessary to implement legislation that amended Sec. 55.0041. RECOGNITION OF OUT-OF-STATE LICENSE OF MILITARY SERVICE MEMBERS AND MILITARY SPOUSES of Chapter 55, Occupations Code during the 88th Legislative Session.

Public Comment

Comments on the proposed amendments may be submitted to Karen Gordon, PT Coordinator, Texas Board of Physical Therapy Examiners, 1801 Congress Ave, Suite 10.900, Austin, Texas 78701; email: karen@ptot.texas.gov. Comments must be received no later than 30 days from the date this proposed amendment is published in the *Texas Register.*

Statutory Authority

Rulemaking authority is expressly granted to a state agency in SECTION 5. of SB 422, 88th Legislative Session.

Cross-reference to Statute

The proposed amendment implements changes made to Sec. 55.0041. RECOGNITION OF OUT-OF-STATE LICENSE OF MILITARY SERVICE MEMBERS AND MILITARY SPOUSES of Chapter 55, Occupations Code during the 88th Legislative Session.

§329.6. Licensure by Endorsement.

(a) - (b) (No change.)

(c) Licensure of a Military Service Member, Military Veteran, or Military Spouse. The board will waive the application fee and will expedite the issuance of a license by endorsement to a military service member, military veteran, or spouse of a military service member. The applicant must provide official documentation of active duty status or veteran status or the active duty status of the spouse.

(1) A military service member or military spouse may qualify to practice in this state under the exemption described in §329.7(b)(5) Exemptions from Licensure if the military service member or military service member to whom a military spouse is married is stationed at a military installation in this state.

(2) A military service member, military spouse or veteran may qualify to practice in this state under a Compact privilege as described in CHAPTER 348. PHYSICAL THERAPY LICENSURE COMPACT.

(d) (No change.)

§329.7. Exemptions from Licensure.

(a) (No change.)

(b) The following categories of individuals practicing physical therapy in the state are exempt from licensure by the board and must notify the board of their intent to practice in the state.

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

(5) A physical therapist or physical therapist assistant licensed in good standing in another jurisdiction of the U.S. who is a military service member or military spouse for the period during which the military service member to whom the military spouse is married is stationed at a military installation in Texas.

(A) The military service member or military spouse must submit written notification including the following:

(i) proof of the military service member or military spouse's residency in this state including a copy of the permanent change of station order for the military service member to whom the spouse is married;

(ii) a copy of the military service member or military spouse's military identification card; and

(iii) a list of the jurisdictions in which the military service member or military spouse has held or currently holds a license.

(B) The board will issue a written confirmation stating that:

(i) licensure in other jurisdictions has been verified;

(ii) the military service member or military spouse is authorized to practice physical therapy in the state; and

(iii) authorization does not exceed three years from the date the confirmation is received.

(c) (No change.)

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 24, 2023.

TRD-202303141
Ralph Harper
Executive Director
Texas Board of Physical Therapy Examiners
Earliest possible date of adoption: October 8, 2023
For further information, please call: (512) 305-6900

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PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

CHAPTER 361. ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §361.1

The Texas State Board of Plumbing Examiners (Board or TSBPE) proposes an amendment to the existing rule at 22 Texas Administrative Code (TAC), Chapter 361, §361.1(18) which concerns definitions and general provisions. The proposed amendment is referred to as the "proposed rule amendment."

EXPLANATION OF AND JUSTIFICATION FOR THE RULE

The Board, under its general rule-making authority in Section 1301.251(2) of Texas Occupations Code and part of its four-year rule review of the existing rules at 22 Texas Administrative Code (TAC) Chapter 361, initiated a rule simplification initiative to make the rules easier to understand and enforce by eliminating unnecessary language, adding clarifying language, and restructuring regulations to reduce regulatory barriers and make the rules more efficient.

During that rule review, the Board recognized that technology with the capability to visually stream or project the job site in real-time such as Facetime, Zoom, etc. may be successfully utilized to perform on-the-job oversight and direct supervision of apprentices and licensees in the field. It is believed that given the pandemic and related, necessary social-distancing practices, virtual supervision was utilized in the plumbing industry since 2020 as a matter of necessity.

The proposed rule amendment creates the option for a Responsible Master Plumber (RMP) to choose to use virtual, visual, real-time supervision in certain conditions to directly supervise work done under their authority and responsibility. Section 361.1(18) defines Direct Supervision. On-the-job oversight and supervision is amended to show that direct supervision may include virtual visual, real-time communication for registrants and licensees with 2000 hours of work documented by a RMP on non-commercial jobs, not involving gas appliances.

The proposed rule amendment does not create any affirmative duty on or regulation of registrants or licensees. The proposed rule amendment does not alleviate the responsibility of the RMP from adequate supervision or from ensuring that work is performed to the standards of the applicable code. It is in the RMP's discretion to utilize optional technology as they deem it appropriate given their job sites, staff, technological capacities. Should inspection or investigation be done on the job site, any present licensee or registrant must demonstrate that real-time, visual communication is successful and effective.

SECTION BY SECTION SUMMARY

Section 361.1(18) Direct Supervision. On-the-job oversight and supervision is amended to show that direct supervision may include virtual visual, real-time communication for registrants and licensees that hold at least 2000 hours of experience documented by a Responsible Master Plumber (RMP). The virtually supervised registrant or licensee may perform non-commercial work not involving gas appliances.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Lisa G. Hill, Executive Director for the Board (Executive Director), has determined that for the first five-year period the proposed rule amendment is in effect, there are no foreseeable increases or reductions in costs to the state or local governments as a result of enforcing or administering the rule. The Executive Director has further determined that for the first five-year period the proposed rule amendment is in effect, there will be no foreseeable losses or increases in revenue for the state or local governments as a result of enforcing or administering the rule.

PUBLIC BENEFITS

The Executive Director has determined that for each of the first five years the proposed rule amendment is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rule amendment will be to have fewer regulatory barriers.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH THE RULE

The Executive Director has determined that for the first five years the proposed rule amendment is in effect, there are no substantial economic costs anticipated to persons required to comply with the proposed rule amendment.

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

Given that the proposed rule amendment does not have a fiscal note which imposes a cost on regulated persons, including another state agency, a special district, or local government, proposal and adoption of the proposed rule amendment is not subject to the requirements of Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

For each of the first five years the proposed rule amendment is in effect, the Board has determined the following: (1) the proposed rule amendment does not create or eliminate a government program; (2) implementation of the proposed rule amendment does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rule amendment does not require an increase or decrease in future legislative appropriations to the agency; (4) the proposed rule amendment does not require an increase or decrease in fees paid to the agency; (5) the proposed rule amendment does not create a new regulation; (6) the proposed rule amendment does not expand, limit, or repeal an existing regulation; (7) the proposed rule amendment does not increase or decrease the number of individuals subject to the rule's applicability; and (8) the proposed rule amendment does not positively or adversely affect this state's economy.

LOCAL EMPLOYMENT IMPACT STATEMENT

No local economies are substantially affected by the proposed rule amendment. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

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

The proposed rule amendment will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated to persons required to comply with the proposed rule amendment. As a result, preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Government Code §2006.002, are not required.

TAKINGS IMPACT ASSESSMENT

There are no private real property interests affected by the proposed rule amendment. As a result, preparation of a takings impact assessment, as provided by Government Code §2007.043, is not required.

PUBLIC COMMENTS

Written comments regarding the proposed rule amendment may be submitted by mail to Patricia Latombe at 929 East 41st Street, Austin, Texas 78765, or by email to rule.comment@tsbpe.texas.gov with the subject line "Rule Amendment." All comments must be received within 30 days of publication of this proposal.

STATUTORY AUTHORITY

This proposal is made under the authority of §1301.251(2) of the Texas Occupations Code authorizes the Texas State Board of Plumbing Examiners to adopt rules as necessary to implement the Chapter. No other statutes or rules are affected by the proposal.

§361.1. Definitions.

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

(1) APA--The Administrative Procedure Act, Chapter 2001 of the Texas Government Code.

(2) Adopted Plumbing Code--A plumbing code, including a fuel gas code adopted by the Board or a political subdivision, in compliance with §1301.255 and §1301.551 of the Plumbing License Law.

(3) Advisory Committee--A committee appointed by the presiding officer of the board created to assist the board in exercising its powers and duties.

(4) Appliance Connection--An appliance connection procedure using only a code-approved appliance connector that does not require cutting into or altering the existing plumbing system.

(5) Applicant--An individual seeking to obtain a license, registration or endorsement issued by the Board.

(6) Board--The Texas State Board of Plumbing Examiners.

(7) Board Member--An individual appointed by the governor and confirmed by the senate to serve on the Board.

(8) Building Sewer--The part of the sanitary drainage system outside of the building, which extends from the end of the building drain to a public sewer, private sewer, private sewage disposal system, or other point of sewage disposal.

(9) Certificate of Insurance--A form submitted to the Board certifying that the Responsible Master Plumber carries insurance coverage as specified in the Plumbing License Law and Board Rules.

(10) Chief Examiner--An employee of the Board who, under the direction of the Executive Director, coordinates and supervises the activities of the Board examinations and registrations.

(11) Cleanout--A fitting, other than a p-trap, approved by the adopted plumbing code and designed to be installed in a sanitary drainage system to allow easy access for cleaning the sanitary drainage system.

(12) Code-Approved Appliance Connector--A semi-rigid or flexible assembly of tube and fittings approved by the adopted plumbing code and designed for connecting an appliance to the existing plumbing system without cutting into or altering the existing plumbing system.

(13) Code-Approved Existing Opening--For the purposes of drain cleaning activities described in §1301.002(3) of the Plumbing License Law, a code-approved existing opening is any existing cleanout fitting, inlet of any p-trap or fixture, or vent terminating into the atmosphere that has been approved and installed in accordance with the adopted plumbing code.

(14) Complaint--A written complaint filed with the Board against a person whose activities are subject to the jurisdiction of the Board.

(15) Contested Case--A proceeding in which the legal rights, duties, or privileges of a party are to be determined by the Board after an opportunity for adjudicative hearing.

(16) Continuing Professional Education or CPE--Approved courses/programs required for a licensee or registrant.

(17) Director of Enforcement--An employee of the Board who meets the definition of "Field Representative" and, under the direction of the Executive Director, coordinates and supervises the activities of the Field Representatives.

(18) Direct Supervision--

(A) The on-the-job oversight and direction of a registered Plumber's Apprentice or licensee performing plumbing work by a licensed plumber who is fulfilling his or her responsibility to the client and employer by ensuring the following:

(i) that the plumbing materials for the job are properly prepared prior to assembly according to the material manufacturers recommendations and the requirements of the adopted plumbing code; and

(ii) that the plumbing work for the job is properly installed to protect health and safety by meeting the requirements of the adopted plumbing code and all requirements of local and state ordinances, regulations and laws.

(iii) This oversight may include virtual visual, real-time communication, on non-commercial jobs not involving gas appliances, for registrants and license holders with 2,000 hours of experience documented by a responsible master plumber.

(B) The on-the-job oversight and direction by a licensed Plumbing Inspector of an individual training to qualify for the Plumbing Inspector Examination.

(C) For plumbing work performed only in the construction of a new one-family or two-family dwelling in an unincorporated area of the state, a Responsible Master Plumber is not required to provide for the continuous or uninterrupted on-the-job oversight of a Registered Plumber's Apprentice's work by a licensed plumber, however, the Responsible Master Plumber must:

(i) provide for the training and management of the Registered Plumber's Apprentice by a licensed plumber;

(ii) provide for the review and inspection of the Registered Plumber's Apprentice's work by a licensed plumber to ensure compliance with subparagraph (A)(i) and (ii) of this paragraph; and

(iii) upon request by the Board, provide the name and plumber's license number of the licensed plumber who is providing on-the-job training and management of the Registered Plumber's Apprentice and who is reviewing and inspecting the Registered Plumber's Apprentice's work on the job, or the name and plumber's license number of the licensed plumber who trained and managed the Registered Plumber's Apprentice and who reviewed and inspected the Registered Plumber's Apprentice's work on a job.

(19) Endorsement--A certification issued by the Board as an addition to a Master Plumber, Plumbing Inspector, or Journeyman Plumber License or a Plumber's Apprentice Registration, including a Drain Cleaner Registration, a Drain Cleaner-Restricted Registration, and a Residential Utilities Installer Registration.

(20) Executive Director--The executive director of the Texas State Board of Plumbing Examiners who is employed by the Board as the executive head of the agency.

(21) Field Representative--An employee of the Board who is:

(A) knowledgeable of the Plumbing License Law and of municipal ordinances related to plumbing;

(B) qualified by experience and training in good plumbing practice and compliance with the Plumbing License Law;

(C) designated by the Board to assist in the enforcement of the Plumbing License Law and Board rules;

(D) licensed by the Board as a plumber; and

(E) hired to:

(i) make on-site license and registration checks to determine compliance with the Plumbing License Law;

(ii) investigate complaints; and

(iii) assist municipal plumbing inspectors in cooperative enforcement of the Plumbing License Law.

(22) Journeyman Plumber--An individual licensed under the Plumbing License Law who has met the qualifications for registration as a Plumber's Apprentice or for licensure as a Tradesman Plumber-Limited, who has completed at least 8,000 hours working under the supervision of a Responsible Master Plumber, who supervises, engages in, or works at the actual installation, alteration, repair, service and renovating of plumbing, and who has successfully fulfilled the examinations and requirements of the Board.

(23) License--A license, registration, certification, or endorsement issued by the Board.

(24) Licensing and Registering--The process of granting, denying, renewing, reinstating, revoking, or suspending a license, registration or endorsement.

(25) Maintenance Man or Maintenance Engineer--An individual who:

(A) is an employee, and not an independent contractor or subcontractor;

(B) performs plumbing maintenance work incidental to and in connection with other employment-related duties; and

(C) does not engage in plumbing work for the general public.

(D) For the purposes of paragraph 25(B), "incidental to and in connection with" includes the repair, maintenance and replacement of existing potable water piping, existing sanitary waste and vent piping, existing plumbing fixtures and existing water heaters. It does not include cutting into fuel gas plumbing systems and the installation of gas fueled water heaters.

(E) An individual who erects, builds, or installs plumbing not already in existence may not be classified as a maintenance man or maintenance engineer. Plumbing work performed by a maintenance man or maintenance engineer is not exempt from state law and municipal rules and ordinances regarding plumbing codes, plumbing permits and plumbing inspections.

(26) Master Plumber--An individual licensed under the Plumbing License Law who is skilled in the design, planning, superintending, and the practical installation, repair, and service of plumbing, who is knowledgeable about the codes, ordinances, or rules and regulations governing those matters, who alone, or through an individual or individuals under his supervision, performs plumbing work, and who has successfully fulfilled the examinations and requirements of the Board.

(27) Medical Gas Piping Installation Endorsement--

(A) A certification entitling the holder of a Master or Journeyman Plumber License to install piping that is used solely to transport gases used for medical purposes including, but not limited to, oxygen, nitrous oxide, medical air, nitrogen, or medical vacuum.

(B) A certification entitling the holder of a Plumbing Inspector License to inspect medical gas and vacuum system installations.

(28) Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement--

(A) A certification entitling the holder of a Master or Journeyman Plumber License to install a multipurpose residential fire protection sprinkler system in a one or two family dwelling.

(B) A certification entitling the holder of a Plumbing Inspector License to inspect a multipurpose residential fire protection sprinkler system.

(29) Military service member--A person who is currently serving in the armed forces of the United States, in a reserve component of the armed forces of the United States, including the National Guard, or in the state military service of any state.

(30) Military spouse--A person who is married to a military service member who is currently on active duty.

(31) Military veteran--A person who has served in the army, navy, air force, marine corps, or coast guard of the United States, or in an auxiliary service of one of those branches of the armed forces.

(32) One-Family Dwelling--A detached structure designed for the residence of a single family that does not have the characteristics of a multiple family dwelling, and is not primarily designed for transient guests or for providing services for rehabilitative, medical, or assisted living in connection with the occupancy of the structure.

(33) Party--A person or state agency named or admitted as a party to a contested case.

(34) Paid Directly--As related to §1301.255(e) of the Plumbing License Law, "paid" and "directly" have the common meanings and "paid directly" means that compensation for plumbing inspections must be paid by the political subdivision to the individual Licensed Plumbing Inspector who performed the plumbing inspections or the plumbing inspection business which utilized the plumbing inspector to perform the inspections.

(35) Person--An individual, partnership, corporation, limited liability company, association, governmental subdivision or public or private organization of any character other than an agency.

(36) Petitioner--A person requesting the Board to adopt, amend or repeal a rule pursuant to §2001.021 of the Texas Government Code and the Board Rules.

(37) Plumbing--

(A) All piping, fixtures, appurtenances, and appliances, including disposal systems, drain or waste pipes, multipurpose residential fire protection sprinkler systems or any combination of these that: supply, distribute, circulate, recirculate, drain, or eliminate water, gas, medical gasses and vacuum, liquids, and sewage for all personal or domestic purposes in and about buildings where persons live, work, or assemble; connect the building on its outside with the source of water, gas, or other liquid supply, or combinations of these, on the premises, or the water main on public property; and carry waste water or sewage from or within a building to the sewer service lateral on public property or the disposal or septic terminal that holds private or domestic sewage.

(B) The installation, repair, service, maintenance, alteration, or renovation of all piping, fixtures, appurtenances, and appliances on premises where persons live, work, or assemble that supply gas, medical gasses and vacuum, water, liquids, or any combination of these, or dispose of waste water or sewage. Plumbing includes the treatment of rainwater to supply a plumbing fixture or appliance. The term "service" includes, but is not limited to, cleaning a drain or sewer line using a cable or pressurized fluid.

(38) Plumbing Company--A person who engages in the plumbing business.

(39) Plumbing Inspection--Any of the inspections required in the Plumbing License Law, including any check of multipurpose residential fire protection sprinkler systems, pipes, faucets, tanks, valves, water heaters, plumbing fixtures and appliances by and through which a supply of water, gas, medical gasses or vacuum, or sewage is used or carried that is performed on behalf of any political subdivision, public water supply, municipal utility district, town, city or municipality to ensure compliance with the adopted plumbing and gas codes and ordinances regulating plumbing.

(40) Plumbing Inspector--Any individual who is employed by a political subdivision or state agency, or who contracts as an independent contractor with a political subdivision or state agency, for the purpose of inspecting plumbing work and installations in connection with health and safety laws, ordinances, and plumbing and gas codes, who has no financial or advisory interests in any plumbing company, and who has successfully fulfilled the examinations and requirements of the Board.

(41) Plumbing License Law or PLL--Chapter 1301 of the Texas Occupations Code.

(42) Pocket Card--A card issued by the Board which:

(A) certifies that the holder has a Responsible Master Plumber License, Master Plumber License, Journeyman Plumber License, Tradesman Plumber-Limited License, Plumbing Inspector License, or a Plumber's Apprentice Registration; and

(B) lists any Endorsements obtained by the holder.

(43) Political Subdivision--A political subdivision of the State of Texas that includes a:

(A) city;

(B) county;

(C) school district;

(D) junior college district;

(E) municipal utility district;

(F) levee improvement district;

(G) drainage district;

(H) irrigation district;

(I) water improvement district;

(J) water control improvement district;

(K) water control preservation district;

(L) freshwater supply district;

(M) navigation district;

(N) conservation and reclamation district;

(O) soil conservation district;

(P) communication district;

(Q) public health district;

(R) river authority; and

(S) any other governmental entity that:

(i) embraces a geographical area with a defined boundary;

(ii) exists for the purpose of discharging functions of government; and

(iii) possesses authority for subordinate self-government through officers selected by it.

(44) P-Trap--A fitting connected to the sanitary drainage system for the purpose of preventing the escape of sewer gasses from the sanitary drainage system and designed to be removed to allow for cleaning of the sanitary drainage system. For the purposes of drain cleaning activities described in §1301.002(2) of the Plumbing License Law, a p-trap includes any integral trap of a water closet, bidet, or urinal.

(45) Public Water System--A system for the provision to the public of water for human consumption through pipes or other constructed conveyances. Such a system must have at least 15 service connections or serve at least 25 individuals at least 60 days out of the year. Two or more systems with each having a potential to serve less than 15 connections or less than 25 individuals, but owned by the same person, firm, or corporation and located on adjacent land will be considered a public water system when the total potential service connections in the combined systems are 15 or greater or if the total number of individuals served by the combined systems total 25 or greater, at least 60 days out of the year. Without excluding other meanings of the terms "individual" or "served," an individual shall be deemed to be served by a water system if the individual lives in, uses as the individual's place of employment, or works in a place to which drinking water is supplied from the water system.

(46) Respondent--A person charged in a complaint filed with the Board.

(47) Responsible Master Plumber or RMP--A licensed Master Plumber who:

(A) allows the person's Master Plumber License to be used by only one plumbing company for the purpose of offering and performing plumbing work;

(B) is authorized to obtain permits for plumbing work;

(C) assumes responsibility for plumbing work performed under the person's license;

(D) has submitted a certificate of insurance as required by the Plumbing License Law and Board Rules; and

(E) When used in Board forms, applications or other communications by the Board, the abbreviation "RMP" shall mean Responsible Master Plumber.

(48) Registration--A document issued by the Board to certify that the named individual fulfilled the requirements of the PLL and Board Rules to register as a Plumber's Apprentice.

(49) Rule--An agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the agency. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of the agency and not affecting private rights or procedures.

(50) Supervision--The general oversight, direction and management of plumbing work and individuals performing plumbing work by a Responsible Master Plumber, or licensed plumber designated by the RMP.

(51) System--An interconnection between one or more public or private end users of water, gas, sewer, or disposal systems that could endanger public health if improperly installed.

(52) Tradesman Plumber-Limited Licensee--An individual who has completed at least 4,000 hours working under the direct supervision of a Journeyman or Master Plumber as a registered Plumber's Apprentice, who has passed the required examination and fulfilled the other requirements of the Board, or successfully completed a career and technology education program, who constructs, installs, changes, repairs, services, or renovates plumbing for one-family or two-family dwellings under the supervision of a Responsible Master Plumber, and who has not met or attempted to meet the qualifications for a Journeyman Plumber License.

(53) Two-Family Dwelling--A detached structure with separate means of egress designed for the residence of two families ("duplex") that does not have the characteristics of a multiple family dwelling and is not primarily designed for transient guests or for providing services for rehabilitative, medical, or assisted living in connection with the occupancy of the structure.

(54) Water Supply Protection Specialist--A Master or Journeyman Plumber who holds the Water Supply Protection Specialist Endorsement issued by the Board to engage in customer service inspections, as defined by rule of the Texas Commission on Environmental Quality, and the installation, service, and repair of plumbing associated with the treatment, use, and distribution of rainwater to supply a plumbing fixture or appliance.

(55) Water Treatment--A business conducted under contract that requires experience in the analysis of water, including the ability to determine how to treat influent and effluent water, to alter or purify water, and to add or remove a mineral, chemical, or bacterial content or substance. The term also includes the installation and service of potable water treatment equipment in public or private water systems and making connections necessary to complete installation of a water treatment system. The term does not include treatment of rainwater or the repair of systems for rainwater harvesting.

(56) Yard Water Service Piping--The building supply piping carrying potable water from the water meter or other source of water supply to the point of connection to the water distribution system at the building.

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 28, 2023.

TRD-202303175
Lynn Latombe
General Counsel
Texas State Board of Plumbing Examiners
Earliest possible date of adoption: October 8, 2023
For further information, please call: (512) 936-5216

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 228. RETAIL FOOD ESTABLISHMENTS

SUBCHAPTER B. MANAGEMENT AND PERSONNEL

25 TAC §228.33

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes new §228.33, concerning Food Allergen Awareness Poster Required.

BACKGROUND AND PURPOSE

The purpose of the proposal is to comply with Senate Bill (S.B.) 812, 88th Legislature, Regular Session, 2023. S.B. 812 amends the Texas Health and Safety Code to add §437.027, requiring retail food establishments to display a poster relating to food allergen awareness in an area of the establishment regularly accessible to the establishment's food service employees. S.B. 812 prescribes the content of the poster at Texas Health and Safety Code §437.027(b).

SECTION-BY-SECTION SUMMARY

Proposed new §228.33 requires retail food establishments to place a food allergen awareness poster in an area accessible to employees and outlines the content of the poster.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

DSHS has determined that during the first five years that the rule will be in effect:

(1) the proposed rule will not create or eliminate a government program;

(2) implementation of the proposed rule will not affect the number of DSHS employee positions;

(3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;

(4) the proposed rule will not affect fees paid to DSHS;

(5) the proposed rule will create a new rule;

(6) the proposed rule will not expand, limit, or repeal an existing rule;

(7) the proposed rule will not change the number of individuals subject to the rule; and

(8) the proposed rule will not affect the state's economy.

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

Donna Sheppard has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The cost of a food allergen awareness poster is negligible to the food establishments that must comply with the rule and is considered in balance with the positive effect on consumer safety. There are approximately 12,000 retail food establishments requiring the food allergen awareness poster under DSHS jurisdiction. DSHS is unable to estimate the number of food establishments under local jurisdiction that must also comply with the rule.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Dr. Timothy Stevenson, Associate Commissioner, Consumer Protection Division, has determined that for each year of the first five years the rule is in effect, the public benefit will be increased employee awareness of the presence of food allergens in retail food establishments and the danger that those allergens present to consumers with food allergies. Employee awareness, in turn, will enhance both prevention of and response to allergenic incidents.

Donna Sheppard has also determined that for the first five years the rule is in effect, persons required to comply with the proposed rule may incur a one-time, negligible cost of not more than $50.00 to obtain a food allergen awareness poster.

REGULATORY ANALYSIS

DSHS has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to DSHS Consumer Protection Division, Food and Drug Section, Retail Food Safety Operations, Mail Code 1987, Texas Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347, hand-delivered to 1100 West 49th Street, Austin, Texas 78756, or by email to foodestablishments@dshs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When faxing or emailing comments, please indicate "Comments on Proposed Rule 23R052" in the subject line.

STATUTORY AUTHORITY

The new rule is authorized by Texas Health and Safety Code §437.027(c), which directs the Executive Commissioner of HHSC to adopt rules to implement legislation; and Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by DSHS, and for the administration of Texas Health and Safety Code Chapter 1001.

The proposed new rule implements Texas Government Code Chapter 531 and Texas Health and Safety Code Chapters 437 and 1001.

§228.33. Food Allergen Awareness Poster Required.

(a) A food establishment shall display a poster relating to food allergen awareness in an area of the establishment regularly accessible to the establishment's food service employees.

(b) The food allergen awareness poster shall be identical or substantially similar to the sample poster displayed on the department website. If not identical, the poster shall, at a minimum, display the following information in a clear and straightforward manner:

(1) the risk of an allergic reaction to a food allergen;

(2) symptoms of an allergic reaction;

(3) the major food allergens, as determined by federal law and regulations of the United States Food and Drug Administration;

(4) the procedures for preventing an allergic reaction; and

(5) appropriate responses for assisting an individual who is having an allergic reaction.

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 25, 2023.

TRD-202303167
Cynthia Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: October 8, 2023
For further information, please call: (512) 834-6753

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 555. NURSING FACILITY ADMINISTRATORS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes in Title 26, Part 1, Chapter 555, Nursing Facility Administrators, amendments to §555.2, concerning Definitions, §555.11, concerning Application Requirements, §555.12, concerning Licensure Requirements, §555.13, concerning Internship Requirements, §555.18, concerning Examinations and Requirements to Take the Examinations, §555.32, concerning Provisional License, and §555.35, concerning Continuing Education Requirements for License Renewal.

BACKGROUND AND PURPOSE

The purpose of the proposal is to clarify requirements and provide additional options to qualify for nursing facility administrator (NFA) licensure. The proposal updates definitions and associated references for consistency with changes made by the National Association of Long Term Care Administrator Boards (NAB), regarding both educational domains for testing and the company conducting the NAB examination. The proposal also adds an additional option for persons to qualify for licensure, and a greater degree of flexibility for the administrator-in-training (AIT) internship. Other non-substantive changes are for clarification.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §555.2 revises definitions for NFA rules. Paragraph (8) updates the names and number of educational domains used by the NAB. Paragraph (12) clarifies that HHSC is responsible for NFA licensure in Texas. Paragraph (23) clarifies that NAB is the national authority on NFA licensure, credentialing, and regulation. Paragraph (28) removes extraneous language from the definition of the NFA advisory committee. Paragraph (30) removes the "professional examination services (PES)" name of the company that administers the NAB licensure exam and renumbers the paragraphs accordingly. Paragraph (35) revises the Texas Administrative Code citation for substandard quality of care.

The proposed amendment to §555.11 revises the requirements for an NFA licensure application. Subsection (a)(5) reduces the number of academic credits required for NFA candidates who hold a transcript with coursework in the updated NAB domains that is not reflected by the baccalaureate degree. Subsections (b) and (c) have non-substantive edits to update rule citations.

The proposed amendment to §555.12 provides additional options for licensure requirements. Subsection (a)(1)(A) reduces the number of academic credits in long-term care administration required for candidates who hold a baccalaureate degree that includes coursework in the updated NAB domains. Subsection (a)(2) updates the NAB domains referenced for applicants holding a baccalaureate degree in health administration, health services administration, health care administration, or nursing. Subsection (a)(3) provides an additional option for persons to qualify for NFA licensure: holding a baccalaureate degree with coursework in the NAB domains and one year of experience as assistant administration of record or administrator of record at a facility in another state. Subsection (a)(4) and (5) have non-substantive renumbering edits. Subsection (a)(6) describes an option for application for candidates with a license issued by another state.

The proposed amendment to §555.13 provides more flexibility for the AIT internship. Subsection (a)(2) removes the requirement for the internship to be completed in a facility with a minimum of 60 beds and instead allows the internship to be completed in a facility of any size. Subsection (a)(6) and (7) have non-substantive renumbering edits. Subsection (a)(8) requires the internship to be completed at the same facility at which the AIT's preceptor serves as NFA. Subsection (b)(2) updates the referenced rule.

The proposed amendment to §555.18 makes a minor editorial change, replacing the word "on-line" with "online" and removes a reference to the name of the company that administers the NAB examination.

The proposed amendment to §555.32 clarifies requirements for provisional NFA licenses. Subsection (a)(4)(A) removes equivocal language around "substantially similar" licensing requirements in other states. Subsection (e) stipulates that if internship hours in another state do not meet requirements in §555.13, the provisional licensee must complete the required internship hours under the supervision of an HHSC-licensed preceptor.

The proposed amendment to §555.35 makes non-substantive edits to clarify requirements for continuing education for license renewal. Subsection (a)(2) revises the number of NAB domains from five to four, which aligns with NAB consolidation of the domains. Subsection (a)(4) makes non-substantive edits to clarify that at least six hours of continuing education in ethics is required. Subsection (c) replaces "three-semester hour" with "three-semester-hour" in reference to a course requirement.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

(1) the proposed rules will not create or eliminate a government program;

(2) implementation of the proposed rules will not affect the number of HHSC employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will not affect fees paid to HHSC;

(5) the proposed rules will not create a new rule;

(6) the proposed rules will not expand, limit, or repeal an existing rule;

(7) the proposed rules will not change the number of individuals subject to the rule; and

(8) the proposed rules will not affect the state's economy.

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses or micro-businesses, or rural communities.

A nursing facility is not a small business or micro-business but may be located in a rural community. The proposed rules are not expected to have an adverse economic effect on small businesses, micro-businesses, or rural communities because there are no requirements to alter current business practices, and there are no new fees or costs imposed on those required to comply.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COST TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas, and do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rules are in effect, the public will benefit from having current information from and regarding the national authority on NFAs, clarified requirements regarding NFA licensure, and a greater degree of flexibility should a person choose to enter the profession.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because any costs incurred by current or prospective NFAs under the proposed rules will be costs that would otherwise be incurred through the current NFA licensure process.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Caroline Sunshine, Policy Specialist, by email to HHSCLTCR-Rules@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 22R103" in the subject line.

SUBCHAPTER A. GENERAL INFORMATION

26 TAC §555.2

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 §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Health and Safety Code §242.302, which grants HHSC the general authority to establish rules consistent with that subchapter, and directs HHSC to establish qualifications of applicants for licenses and renewal of licenses issued under that subchapter, as well as reasonable and necessary administration and implementation fees, and continuing education hours required to renew a license under that subchapter.

The amendment gives effect to Texas Government Code §531.0055 and §531.021; Texas Human Resources Code §32.021; and Texas Health and Safety Code §242.302.

§555.2. Definitions.

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

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

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

(3) Administrator-in-training (AIT)--[]A person undergoing an internship under a HHSC-approved certified preceptor.

(4) Administrator of Record--The individual who is listed as the facility's licensed nursing facility administrator with the HHSC Licensing and Credentialing Section.

(5) Applicant--A person applying for a Texas nursing facility administrator (NFA) license.

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

(7) Complaint--An allegation that an NFA violated one or more of the licensure rules or statutory requirements.

(8) Domains of the National Association of Long Term Care Administrator Boards (NAB)--The four [~~five~~] categories for education and continuing education of the NAB, which are care, services, and supports; operations; environment and quality; and leadership and strategy. [~~resident care and quality of life; human resources; finance; physical environment and atmosphere; and leadership and management.~~]

(9) Formal hearing--A hearing held by the State Office of Administrative Hearings to adjudicate a sanction taken by HHSC against an NFA.

(10) Good standing--In Texas an NFA is in good standing if the NFA is in compliance with the rules in this chapter and, if applicable, the terms of any sanction imposed by HHSC. An NFA licensed or registered in another state is in good standing if the NFA is in compliance with the NFA licensing or registration rules in the other state and, if applicable, the terms of any sanction imposed by the other state.

(11) Health services executive (HSE)--An individual who has entry-level competencies in [~~of~~] a nursing facility, assisted living community, or home and community-based service provider in this state [~~jurisdiction~~] or another state [~~jurisdiction~~]. The HSE has met NAB's minimum standards for qualification as an HSE.

(12) HHSC--The Texas Health and Human Services Commission. HHSC is responsible for NFA licensure in Texas.

(13) Internship--The training period in a nursing facility for an AIT. When HHSC accepts internship hours completed in another state, the hours must be completed in a facility that qualifies as a nursing facility or nursing home under the laws of the other state.

(14) License--An NFA license or provisional license.

(15) Licensee--A person licensed by HHSC as an NFA.

(16) Long-term Care Regulation--The department of HHSC responsible for long-term care regulation, including determining nursing facility compliance with licensure and certification requirements and the regulation of NFAs.

(17) Management experience--Full-time employment as a department head, assistant nursing facility administrator, or licensed professional supervising two or more employees in a nursing facility, including a nursing facility outside of Texas, or skilled nursing hospital unit.

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

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

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

(21) Misappropriation of resident property--Taking, secretion, misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any property, real or personal, or anything of value belonging to or under the legal control of a resident without the effective consent of the resident or other appropriate legal authority, or the taking of any action contrary to any duty imposed by federal or state law prescribing conduct relating to the custody or disposition of property of a resident.

(22) NAB examination--The national examination developed by NAB that applicants must pass in combination with the state licensure examination to be issued a license to practice nursing facility administration in Texas. The NAB examination consists of two modules: Core of Knowledge and Line of Service.

(23) National Association of Long Term Care Administrator Boards (NAB)--The national authority on licensing, credentialing, and regulating administration of organizations along the continuum of long-term care. NAB sets the national standards and evaluation requirements for NFAs. [~~State boards or agencies responsible for the licensure of NFAs.~~]

(24) National Continuing Education Review Service (NCERS)--The part of NAB that approves and monitors continuing education activities for NFAs.

(25) Neglect--Failure to provide goods or services, including medical services, that are necessary to avoid physical or emotional harm, pain, or mental illness.

(26) Nursing facility--A facility licensed in accordance with THSC Chapter 242.

(27) Nursing Facility Administrator (NFA)--An individual licensed by HHSC to engage in the practice of nursing facility administration, regardless of whether the individual has an ownership interest in the facility.

(28) Nursing Facility Administrators Advisory Committee (NFAAC)--The advisory committee established by THSC §242.303 [~~(the text of Subchapter I is effective until federal determination of failure to comply with federal regulations)~~].

(29) Preceptor--An NFA certified by HHSC to provide supervision to an AIT.

[~~(30) Professional examination services (PES)--The testing agency that administers the NAB and state examinations to applicants seeking licensure as an NFA.~~]

(30) [~~(31)~~] Referral--A recommendation made by Long-term Care Regulation staff to investigate an NFA's compliance with licensure requirements when deficiencies or substandard quality of care

deficiencies are found in a nursing facility, as required by Title 42 Code of Federal Regulations §488.325.

(31) [~~(32)~~] Sanctions--An adverse licensure action against an NFA. In Texas, a sanction is one of the actions listed in §555.57 of this chapter (relating to Schedule of Sanctions).

(32) [~~(33)~~] Self-study course--A NAB-approved education course that an individual pursues independently to meet continuing education requirements for license renewal.

(33) [~~(34)~~] State examination--The state licensure examination that applicants must pass, in combination with the NAB examination, to be issued a license to practice nursing facility administration in Texas.

(34) [~~(35)~~] Substandard quality of care--For a Medicare- or Medicaid-certified facility, this term has the meaning given in Title 42 Code of Federal Regulations §488.301. For a licensed-only facility, this term has the meaning given in §554.101 of this title (relating to Definitions). [~~Texas Administrative Code, Title 26, Part 1, §554.101(139).~~]

(35) [~~(36)~~] THSC--Texas Health and Safety Code.

(36) [~~(37)~~] Traditional business hours--Monday through Friday from 8:00 a.m. until 5:00 p.m.

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 28, 2023.

TRD-202303170
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: October 8, 2023
For further information, please call: (512) 438-3161

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SUBCHAPTER B. REQUIREMENTS FOR LICENSURE

26 TAC §§555.11 - 555.13, 555.18

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Health and Safety Code §242.302, which grants HHSC the general authority to establish rules consistent with that subchapter, and directs HHSC to establish qualifications of applicants for licenses and renewal of licenses issued under that subchapter, as well as reasonable and necessary administration and implementation fees, and continuing education hours required to renew a license under that subchapter.

The amendments give effect to Texas Government Code §531.0055 and §531.021; Texas Human Resources Code §32.021; and Texas Health and Safety Code §242.302.

§555.11. Application Requirements.

(a) Except as provided in subsections (b) and (c) of this section, an applicant seeking licensure must submit to the Texas Health and Human Services Commission (HHSC):

(1) a complete Nursing Facility Administrator's Application for Licensure form;

(2) the application fee;

(3) fingerprints for a Texas Department of Public Safety criminal background check;

(4) an official transcript reflecting a baccalaureate degree from a college or university accredited by an agency recognized by the Texas Higher Education Coordinating Board;

(5) if not a part of the transcript reflecting a baccalaureate degree, another transcript reflecting 12 [~~15~~] semester credit hours in long-term care administration, or its equivalent, that include the four [~~five~~] domains of the National Association of Long Term Care Administrator Boards; and

(6) proof of completing the minimum applicable internship that meets the internship requirements in §555.13 of this subchapter (relating to Internship Requirements).

(b) If an applicant has a health services executive (HSE) qualification and is applying for a license under §555.12(a)(5) [~~§555.12(a)(4)~~] of this subchapter (relating to Licensure Requirements), the applicant must submit:

(1) a complete Nursing Facility Administrator's Application for Licensure form;

(2) the application fee;

(3) proof of the HSE qualification;

(4) fingerprints for a Texas Department of Public Safety criminal background check; and

(5) certification [~~proof~~] that the applicant has not had a license revoked in any state.

(c) If an applicant has an NFA license issued by another state and is applying for a license under §555.12(a)(6) [~~§555.12(a)(5)~~] of this subchapter, the applicant must submit:

(1) a complete Reciprocity Licensure Questionnaire;

(2) the application fee;

(3) fingerprints for a Texas Department of Public Safety criminal background check; and

(4) proof of a license in good standing in another state.

(d) An application is valid for one year from the date the application fee is received.

(e) An applicant who does not meet the requirements for licensure within one year after HHSC receives the application must reapply for licensure as provided in this section.

(f) HHSC is not responsible for applications, forms, notices, and correspondence unless they are received by HHSC.

(g) HHSC is not responsible for mail it sends to a licensee or applicant if the licensee's or applicant's current address was not reported in writing to HHSC.

§555.12. Licensure Requirements.

(a) An applicant must meet one of the following groups of requirements to obtain a license as a nursing facility administrator (NFA).

(1) An applicant has a baccalaureate degree in any subject from a college or university accredited by an agency recognized by the Texas Higher Education Coordinating Board; and

(A) a minimum of 12 [~~15~~] semester credit hours in long-term care administration, or its equivalent, that includes courses in the four [~~five~~] domains of the National Association of Long Term Care Administrator Boards (NAB);

(B) completed a 1,000-hour internship that meets the requirements in §555.13 of this subchapter (relating to Internship Requirements); and

(C) passed the state and NAB examinations described in §555.18 of this subchapter (relating to Examinations and Requirements to Take the Examinations).

(2) An applicant has a baccalaureate degree in health administration, health services administration, health care administration, or nursing that includes coursework encompassing the four [~~five~~] domains of the NAB; and

(A) three years of management experience;

(B) completed a 500-hour internship that meets the requirements in §555.13 of this subchapter; and

(C) passed the state and NAB examinations described in §555.18 of this subchapter.

(3) An applicant has a baccalaureate degree with coursework in the four domains of NAB and one year of experience as assistant administrator of record or administrator of record in another state; and

(A) completed a 500-hour internship that meets the requirements in §555.13 of this subchapter; and

(B) passed the state and NAB examinations described in §555.18 of this subchapter.

(4) [~~(3)~~] An applicant has a master's degree in health administration, health services administration, health care administration, or nursing that includes coursework encompassing the four [~~five~~] domains of the NAB; and

(A) one year of management experience;

(B) completed a 500-hour internship that meets the requirements in §555.13; and

(C) passed the state and NAB examinations described in §555.18 of this subchapter.

(5) [~~(4)~~] An applicant has a health services executive qualification; and

(A) has not had a license revoked in any state; and

(B) passed the state examination described in §555.18 of this subchapter.

(6) [~~(5)~~] An applicant has a license issued by a state other than Texas and meets the requirements for licensure in paragraphs (1), (2), (3), or (4) [~~(1), (2), or (3)~~] of this subsection.

(b) HHSC accepts foreign university degrees and coursework that is counted as transfer credit by accredited universities recognized by the American Association of Collegiate Registrars and Admissions officers.

§555.13. Internship Requirements.

(a) Except as provided in subsection (b) or (c) of this section, an applicant must complete an internship that meets the following requirements.

(1) Before an applicant starts the internship, the applicant and the applicant's preceptor must complete a Texas Health and Human Services (HHSC) internship application.

(2) The internship must be in a nursing facility [~~that has a minimum of 60 beds, unless HHSC grants an exception to the minimum bed requirement. HHSC may consider an exception to the 60-bed requirement on a case-by-case basis. To be considered, the facility with fewer than 60 beds must be located in a rural area and more than 50 miles away from a 60-bed facility. An applicant must submit to HHSC a written request to complete an internship in a facility with fewer than 60 beds. HHSC will notify the applicant of the status of the applicant's request~~].

(3) A minimum of half of the internship hours must be during traditional business hours.

(4) The administrator-in-training (AIT) can train no more than 40 hours a week.

(5) If the internship is completed with a nursing facility administrator (NFA) not associated with a university as the preceptor, the AIT must complete a preceptor performance report. Additionally, the preceptor must complete an AIT final report.

(6) An AIT must complete an HHSC course in Infection Control and Personal Protective Equipment.

(7) [~~(6)~~] If the internship is completed with an NFA associated with a university accredited by an agency recognized by the Texas Higher Education Coordinating Board as the preceptor, the AIT must submit an official transcript to HHSC.

(8) The internship must be completed at the same facility at which the AIT's preceptor serves as NFA.

(b) HHSC may accept an internship completed in another state if:

(1) the internship is part of a National Association of Long Term Care Administrator Boards-accredited program; or

(2) the internship is approved by the other state and a minimum of 1,000 hours or a minimum of 500 hours if the requirements listed in §555.12(a)(2), (3), or (4) [~~§555.12(a)(2) or (3)~~] of this subchapter (relating to Licensure Requirements) are met. An applicant who has completed fewer than 1,000 hours of internship in another state that does not qualify for a 500-hour internship must [~~may~~] complete the remaining hours under a preceptor.

(c) As a substitute to meeting the internship requirements described in subsection (a) or (b) of this section, an applicant may submit to HHSC proof of a health services executive (HSE) qualification and certify that the applicant has not had a license or HSE qualification revoked in any state.

(d) The AIT must submit proof of completion of the internship or completion of HSE. HHSC will review the proof of completion and notify the applicant of the status of the applicant's request.

§555.18. Examinations and Requirements to Take the Examinations.

(a) Except as provided in subsection (b) of this section, an applicant seeking a license as a nursing facility administrator (NFA) from the Texas Health and Human Services Commission (HHSC) must pass the following examinations:

(1) the state examination on nursing facility requirements in Texas; and

(2) the NAB examinations.

(b) An applicant who meets the academic and internship requirements by presenting evidence of a health services executive (HSE) qualification must pass the state examination.

(c) An applicant registers for examination at the designated NAB website by:

(1) submitting an application for approval to take the examination; and

(2) paying the applicable state examination and NAB examination fees online [~~on-line~~].

(d) HHSC sends an e-mail notifying an applicant of the applicant's eligibility to take the examinations.

(e) An applicant must not take any examination without HHSC approval.

(f) An applicant with a disability, including an applicant with dyslexia as defined in Texas Education Code §51.970 (relating to Instructional Material for Blind and Visually Impaired Students and Students with Dyslexia), may request a reasonable accommodation for the examination under the Americans with Disabilities Act.

(g) An applicant completes the online [~~on-line~~] state and NAB examinations [~~at professional examination services~~].

(h) HHSC notifies an applicant of examination scores after receiving examination results.

(i) An applicant who fails an examination and wants to retake it must pay the appropriate state or NAB examination fee for each exam.

(j) An applicant who fails the state or NAB examination three consecutive times must complete an additional 1,000-hour administrator-in-training internship before retaking the examination.

(k) An applicant previously licensed as an NFA and whose license expired 365 or more days before the applicant reapplies for a license or who voluntarily surrendered the license must retake the state examination to obtain a new license.

(l) An applicant previously licensed as an NFA and whose license expired 365 or more days before the applicant reapplies for a license, or who voluntarily surrendered the license, must retake the NAB examination to obtain a new license if more than five years have passed since the applicant passed the NAB examination.

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 28, 2023.

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Karen Ray
Chief Counsel
Health and Human Services Commission
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For further information, please call: (512) 438-3161

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SUBCHAPTER C. LICENSES

26 TAC §555.32, §555.35

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Health and Safety Code §242.302, which grants HHSC the general authority to establish rules consistent with that subchapter, and directs HHSC to establish qualifications of applicants for licenses and renewal of licenses issued under that subchapter, as well as reasonable and necessary administration and implementation fees, and continuing education hours required to renew a license under that subchapter.

The amendments give effect to Texas Government Code §531.0055 and §531.021; Texas Human Resources Code §32.021; and Texas Health and Safety Code §242.302.

§555.32. Provisional License.

(a) The Texas Health and Human Services Commission (HHSC) issues a provisional license to an applicant currently licensed or registered as a nursing facility administrator (NFA) in another state who submits the following to HHSC:

(1) complete and notarized Provisional Licensure Questionnaire and Nursing Facility Administrator License Application forms;

(2) the application fee;

(3) the provisional license fee; and

(4) proof of the following:

(A) a license and good standing status in another state [~~with licensing requirements substantially equivalent to the Texas licensure requirements~~];

(B) employment for at least one year as an administrator of record of a nursing facility in applicant's state;

(C) a passing score on the National Association of Long Term Care Administrator Boards examination and the state examination; and

(D) sponsorship by an NFA licensed by HHSC and who is in good standing, unless HHSC waives sponsorship based on a demonstrated hardship.

(b) A provisional license expires 180 days from the date of issue.

(c) HHSC issues an initial license certificate to a provisional license holder who satisfies the requirements for a license in §555.12 of this chapter (relating to Licensure Requirements) and §555.31 of this subchapter (relating to Initial license).

(d) HHSC may determine that a criminal conviction or sanction taken in another state is a basis for pending or denying a provisional license.

(e) If the internship hours completed in another state do not meet the requirements in §555.13 of this chapter (relating to Internship Requirements), then a provisional licensee must complete the required internship hours under the supervision of an HHSC-certified preceptor as described in §555.12 of this chapter.

§555.35. Continuing Education Requirements for License Renewal.

(a) The 40 hours of continuing education required for license renewal must:

(1) be completed during the previous two-year licensure period;

(2) include one or more of the four [~~five~~] domains of the National Association of Long Term Care Administrator Boards (NAB);

(3) include a Texas Health and Human Services Commission (HHSC) course in Infection Control and personal protective equipment;

(4) include at least six hours of continuing education in ethics; and

(5) be:

(A) approved by the National Continuing Education Review Service;

(B) a HHSC-sponsored event; or

(C) an upper-division semester credit course taken or taught at a post-secondary institution of higher education accredited by an agency recognized by the Texas Higher Education Coordinating Board.

(b) HHSC accepts NAB-approved self-study courses toward the required 40 hours of continuing education.

(c) HHSC waives, at a maximum, 20 of the 40 hours of continuing education required of a licensee who completes one three-semester-hour [~~three-semester hour~~] upper-division course taken at a post-secondary institution of higher education.

(d) HHSC approves continuing education credit hours for the same course, seminar, workshop, or program only once per license renewal period.

(e) HHSC may perform an audit of continuing education courses, seminars, or workshops that the licensee has reported by requesting certificates of attendance.

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

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Karen Ray
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For further information, please call: (512) 438-3161

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CHAPTER 749. MINIMUM STANDARDS FOR CHILD-PLACING AGENCIES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes repeal of §749.2472, amendment to §749.2533; and new §§749.4401, 749.4411, 749.4413, 749.4415, 749.4417, 749.4419, 749.4421, 749.4423, 749.4425, 749.4427, 749.4429, 739.4431, 749.4433, 749.4451, 749.4453, 749.4455 in Title 26, Texas Administrative Code, Chapter 749, Minimum Standards for Child-Placing Agencies.

BACKGROUND AND PURPOSE

The rule changes implement Senate Bill 1896, 87th Legislature, Regular Session, 2021, as it relates to SECTION 21 of the bill.

SECTION 21 amended Texas Human Resources Code (HRC) to add §42.0538, which requires HHSC Child Care Regulation (CCR) to establish standards to allow a Child-Placing Agency (CPA) to issue a provisional foster home verification to a kinship provider who meets basic health and safety requirements identified in CCR rules. This statute cross-references Texas Family Code §264.851 for the definition of "kinship provider." This statute also requires CCR to establish the timeframe by which a foster home with a provisional kinship verification must meet all the requirements for a non-expiring verification. Accordingly, CCR is proposing rules that specify the requirements associated with the provisional verification of a kinship foster home.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §749.2472 deletes the rule as no longer necessary because the content of the rule has been modified and moved to proposed new §749.4455.

The proposed amendment to §749.2533(1) updates the rule title and content to clarify that there are two scenarios in which a CPA may issue a provisional verification; (2) formats the rule into an introduction with two subdivisions; and (3) puts the new requirements for a kinship provider in subdivision (2). The requirements for a kinship provider (A) establish that a CPA may issue a provisional verification to a kinship provider in specific circumstances, and (B) clarify that rules for provisional kinship foster home verifications are located in proposed new Subchapter W, Division 2, Provisional Kinship Foster Home Verification, of this chapter.

Proposed new Subchapter W, Kinship Foster Homes, adds a new subchapter in Chapter 749 for rules related to kinship foster homes.

Proposed new Division 1, Definitions, in proposed new Subchapter W, contains definitions for words and terms used in Subchapter W.

Proposed new §749.4401 provides terms and definitions that are used throughout the subchapter. The rule (1) includes the terms "affinity" and "consanguinity," which are identical to the definitions found in Chapter 745, Licensing, Subchapter A §745.21; and (2) adds definitions for "kinship foster child," "kinship foster home," "kinship foster parent," and "provisional kinship foster home verification".

Proposed new Division 2, Provisional Kinship Foster Home Verification, in proposed new Subchapter W, contains rules relating the requirements for a provisional kinship foster home verification.

Proposed new §749.4411 establishes that a CPA must comply with rules in new proposed Subchapter W, Kinship Foster Homes, Division 2, Provisional Kinship Foster Home Verification (1) before issuing a provisional kinship foster home verification; and (2) while a provisional kinship foster home verification is in effect.

Proposed new §749.4413 requires a CPA to comply with all other rules in Chapter 749, Minimum Standards for Child-Placing Agencies, unless (1) the CPA waives a requirement as provided by a rule in proposed new Division 2, Provisional Kinship Foster Home Verification; or (2) a rule in Division 2, Provisional Kinship Foster Home Verification, replaces another rule in Chapter 749.

Proposed new §749.4415 establishes which orientation training requirements a CPA may waive for a provisional kinship foster home while a provisional kinship foster home verification is in effect. The rule allows a CPA to waive the orientation topic in §749.831(a)(3), which requires a prospective foster parent to receive training on the needs and characteristics of children in the home.

Proposed new §749.4417 establishes when a prospective kinship foster parent is exempt from pre-service experience requirements. The rule (1) exempts a prospective kinship foster parent from completing pre-service experience in §749.861(b) of Chapter 749 if the kinship foster child was living in the home when the prospective kinship foster home applied with the CPA; and (2) if a prospective foster parent does not meet the pre-service exemption criteria in proposed new §749.4417(a) and must complete pre-service experience, allows a CPA to limit the prescribed regime of child-care experience in §749.861(b) to observations and interactions with the kinship foster child in the prospective kinship foster parent's home or the child's current placement.

Proposed new §749.4419 establishes the timeframes within which a caregiver in a provisional kinship foster home must complete the pre-service training requirements required by §749.863. The rule requires a caregiver to complete (1) general pre-service training required in (a)(1) in Figure: 26 TAC §749.863(a) before the CPA issues a non-expiring foster home verification unless the CPA waives the requirement according to §749.868, which is a waiver option available to all foster homes; (2) normalcy training required in (a)(2) in Figure: 26 TAC §749.863(a) before the CPA issues a non-expiring foster home verification unless the agency waives the requirement according to §749.868, which is a waiver option available to all foster homes; (3) emergency behavior intervention (EBI) training required under (a)(3) in Figure: 26 TAC §749.863(a) before the CPA issues a non-expiring foster home verification if the CPA does not allow for the use of EBI unless (A) the caregiver is exempt because the caregiver cares exclusively for children receiving treatment services for primary medical needs, or (B) the CPA waives the training requirement according to §749.868; (4) EBI training according to the timeframes in (a)(4)(C) in Figure: 26 TAC §749.863(a) if the CPA allows for use of EBI unless (A) the caregiver is exempt because the caregiver cares exclusively for children receiving primary medical needs, or (B) the CPA waives the requirement according to §749.868, which is a waiver option available to all foster homes; (5) safe sleeping training required in (a)(5) in Figure: 26 TAC §749.863(a) according to timeframes in (a)(5)(C) in Figure: 26 TAC §749.863(a) if the kinship foster home will care for children younger than two years of age, which is consistent with the requirement for all foster homes; and (6) administration of psychotropic medication training required in (a)(3) in Figure: 26 TAC §749.863(a) before the caregiver administers psychotropic medication, which is consistent with the requirements for all foster homes.

Proposed new §749.4421 outlines the foster home screening requirements a CPA must complete before issuing a provisional kinship foster home verification. The rule requires a CPA to (1) meet the home screening requirements in Subchapter M, Foster Home: Screenings and Verifications, Division 2, Foster Home Screenings if the kinship foster child was not living in the home of the prospective kinship foster home on the date the kinship foster parent applied with the CPA; or (2) request a copy of the kinship home assessment completed by the Texas Department of Family and Protective Services (DFPS) or Single Source Continuum Contractor (SSCC) within 30 days after the date the home applied with the agency if the kinship foster child was living in the kinship foster home on the date the prospective kinship foster home applied with the CPA. The rule provides specific actions a CPA must complete before issuing a provisional foster home verification, depending on whether DFPS or SSCC provides the CPA with a kinship home assessment. The rule also provides that CPA management staff must review and approve the home screening or home screening addendum.

Proposed new §749.4423 outlines the information a CPA must obtain and document from a DFPS kinship development worker or SSCC equivalent for a foster home screening or an addendum to the kinship home assessment for a provisional kinship foster home verification. The rule requires the CPA to (1) gather and document, if a kinship development worker or SSCC equivalent is assigned to the home, if applicable, (A) any identified concerns impacting the health or safety of children and the steps taken to mitigate the concerns, (B) kinship home assessment evaluations completed for caregivers in the home, and (C) kinship development plans (KDP) put in place, the reason for the plan, and the outcome of the plan; and (2) create and document the CPA's plan to address and mitigate any concerns identified in the KDP. If the CPA is unable to obtain this information, the rule requires the CPA to (1) document diligent efforts to contact the DFPS kinship development worker or SSCC equivalent if the attempts to contact the DFPS kinship development worker or SSCC equivalent are unsuccessful; or (2) document if there is not a DFPS kinship development worker or SSCC equivalent assigned to the home.

Proposed new §749.4425 outlines the foster home verification requirements a CPA must meet before issuing a provisional kinship foster home verification. The rule (1) only allows a CPA to issue a provisional kinship foster home verification to a kinship foster home that provides, or will provide, care to kinship foster children in the conservatorship of DFPS; (2) allows a CPA to issue the provisional kinship foster home verification after the CPA (A) completes requirements in §749.2470(a)(3) - (6) and proposed new §749.4421, (B) complies with requirements in proposed new §749.4423, (C) documents and addresses with the kinship foster family any indicators of potential risk to children based on (i) the background information the CPA receives from the DFPS kinship development worker or SSCC equivalent and (ii) any screening and evaluation information the CPA has conducted; (D) the CPA's child placement management staff reviews and approves the provisional kinship foster home verification by dating and signing it; and (E) issues a verification certificate that includes the (i) total capacity of the kinship foster home, including any adopted children of the caregivers who live in the kinship foster home and any children for whom the family provides day care, (ii) kinship foster home's foster care capacity, (iii) names and ages of the kinship foster children for which the kinship foster home is verified to provide foster care, (iv) types of services the kinship home will provide, (v) CPA's main office or branch office issuing the provisional kinship foster home verification, and (vi) expiration date of the provisional kinship foster home verification. The rule also clarifies that a CPA may issue a provisional kinship foster home verification before kinship foster parents complete pre-service training in accordance with proposed new §749.4419.

Proposed new §749.4427 establishes the length of time for which a CPA may issue a provisional kinship foster home verification as a maximum six months from the date it is issued. The rule also (1) states that a provisional kinship foster home verification may not be renewed; and (2) clarifies that a provisional

kinship foster home verification expires when a CPA issues a non-expiring foster home verification or closes the home.

Proposed new §749.4429 outlines the requirements a CPA must follow if a provisional kinship foster home will not meet the requirements for a non-expiring foster home verification before the provisional kinship foster home verification expires. The rule requires the CPA to (1) notify the parent as soon as the agency becomes aware that the home will not meet the requirements for a non-expiring verification; (2) close the kinship foster home by the date the provisional kinship foster home verification expires; and (3) complete a home closure summary as required by §749.2497.

Proposed new §739.4431 outlines the types of placements a CPA can make in a kinship foster home with a provisional kinship foster home verification. The rule (1) limits placements to kinship children; and (2) requires that if a CPA places additional kinship foster children in the kinship foster home while a provisional kinship foster home verification is in effect, the CPA must, by the date the agency places additional kinship children in the home, (A) determine and document in the home's record that the home is capable of providing care for the additional kinship foster children in accordance with rules in Chapter 749, (B) update the kinship foster home's provisional verification certificate to comply with requirements in §749.4425(b)(6), and (C) notify CCR of the change in verification as required by §749.2489. The rule also requires a CPA to, within 30 days after placing a kinship foster child in the home, (1) review and update with an addendum, if necessary, the foster home screening or the addendum to the kinship foster home assessment that was completed in accordance with §749.4421; and (2) ensure the kinship foster home meets all applicable requirements in Chapter 749. The rule further clarifies that placement of an additional kinship foster child in a kinship foster home with a provisional kinship foster home verification does not change the expiration date of the provisional verification.

Proposed new §749.4433 prohibits a CPA from using a kinship foster home with a provisional kinship foster home verification for respite care.

Proposed new Division 3, Non-Expiring Kinship Foster Home Verification, in proposed new Subchapter W, contains rules relating to requirements for issuing a non-expiring foster home verification to a kinship foster home.

Proposed new §749.4451 clarifies that a CPA may issue a kinship foster home a non-expiring foster home verification without having first issued a provisional kinship foster home verification.

Proposed new §749.4453 outlines the steps a CPA must take before issuing a non-expiring foster home verification to a kinship foster home with a provisional foster home verification. The rule requires a CPA to (1) ensure each caregiver is in compliance with all orientation, pre-service experience, and pre-service training requirements in Subchapter F; (2) meet all foster home verification requirements in §749.2470; and (3) notify CCR of the change in verification, as required in §749.2489.

Proposed new §749.4455 incorporates the content of proposed repealed §749.2472, relating to the requirement for a CPA to obtain a copy of the kinship home assessment completed by DFPS or SSCC, with updates to wording to clarify the rule applies if the CPA did not first issue a provisional kinship foster home verification.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

(1) the proposed rules will not create or eliminate a government program;

(2) implementation of the proposed rules will not affect the number of HHSC employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will not affect fees paid to HHSC;

(5) the proposed rules will create new rules;

(6) the proposed rules will repeal and expand existing rules;

(7) the proposed rules will increase the number of individuals subject to the rules; and

(8) the proposed rules will not affect the state's economy.

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules (1) are necessary to protect the health, safety, and welfare of the residents of Texas; (2) do not impose a cost on regulated persons; and (3) are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Rachel Ashworth-Mazerolle, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect the public benefit will be (1) greater flexibility for a CPA to verify a kinship foster home so that the CPA can provide the kinship foster home and children with additional support as the home works towards becoming fully verified; and (2) rules that comply with state law.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because there is no cost to comply with the proposed rules.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Aimee Belden by email at Aimee.Belden@hhs.texas.gov.

Written comments on the proposal may be submitted to Aimee Belden, Rules Writer, Child Care Regulation, Texas Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to CCRRules@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 22R116" in the subject line.

SUBCHAPTER M. FOSTER HOMES: SCREENINGS AND VERIFICATIONS
DIVISION 3. VERIFICATION OF FOSTER HOME

26 TAC §749.2472

STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code, Chapter 42.

The repeal affects Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§749.2472. Are there any additional requirements to verify a foster home that is currently acting as a kinship home with the Child Protective Services (CPS) Division of the Department?

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 22, 2023.

TRD-202303087
Karen Ray
Chief Counsel
Health and Human Services Commission
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For further information, please call: (512) 438-3269

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DIVISION 4. TEMPORARY, TIME-LIMITED, AND PROVISIONAL VERIFICATIONS

26 TAC §749.2533

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, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code, Chapter 42.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§749.2533. When may I issue [~~What is the purpose of~~] a provisional verification?

You may issue a provisional verification to:

(1) Allow [~~The purpose of a provisional verification is to permit~~] continued care of foster children in a foster home that is transferring from one child-placing agency to another, whether in the current residence or a new residence; or[~~.~~]

(2) Allow a kinship provider to care for a kinship foster child in a kinship foster home when the kinship provider meets basic health and safety needs identified in Subchapter W, Division 2 of this chapter (relating to Provisional Kinship Foster Home Verification).

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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Chief Counsel
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SUBCHAPTER W. KINSHIP FOSTER HOMES
DIVISION 1. DEFINITIONS

26 TAC §749.4401

STATUTORY AUTHORITY

The new rule 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, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code, Chapter 42.

The new rule affects Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§749.4401. What do certain words mean in this subchapter?

These terms have the following meanings in this subchapter:

(1) Affinity--Related by marriage, as set forth in Texas Government Code §573.024 (relating to Determination of Affinity).

(2) Consanguinity--Two individuals are related to each other by consanguinity if one is a descendant of the other, or they share

a common ancestor. An adopted child is related by consanguinity for this purpose. Consanguinity is defined in Texas Government Code §573.022 (relating to Determination of Consanguinity).

(3) Kinship foster child--A child in the care of a kinship foster home who:

(A) Is related to the kinship foster parents by consanguinity or affinity; or

(B) Has a longstanding and significant relationship with the kinship foster parent before living in the kinship foster home.

(4) Kinship foster home--A foster family home that has a kinship foster parent or parents.

(5) Kinship foster parent--A foster parent who:

(A) Is related to a foster child by consanguinity or affinity;

(B) Has a longstanding and significant relationship with the foster child before the child is placed in the kinship foster home; or

(C) Is the spouse of a foster parent who has a longstanding and significant relationship with the foster child before the child is placed in the kinship foster home.

(6) Provisional kinship foster home verification--A temporary foster home verification for a kinship foster home. A kinship foster home must meet certain requirements for a non-expiring foster home verification, as provided in this subchapter.

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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DIVISION 2. PROVISIONAL KINSHIP FOSTER HOME VERIFICATION

26 TAC §§749.4411, 749.4413, 749.4415, 749.4417, 749.4419, 749.4421, 749.4423, 749.4425, 749.4427, 749.4429, 749.4431, 749.4433

STATUTORY AUTHORITY

The new rules are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code, Chapter 42.

The new rules affect Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§749.4411. When must I comply with the rules in this division?

You must comply with the rules in this division before issuing a provisional kinship foster home verification and while a provisional kinship foster home verification is in effect.

§749.4413. In addition to rules in this division, what other rules in this chapter must I comply with while a provisional kinship foster home verification is in effect?

You must comply with all other rules in this chapter while a provisional kinship foster home verification is in effect, unless:

(1) You waive a requirement, as provided by in this division; or

(2) A rule in this division replaces another rule in this chapter.

§749.4415. Which orientation requirements may I waive for a kinship foster parent while a provisional kinship foster home verification is in effect?

You may waive the orientation requirement in §749.831(a)(3) of this chapter (relating to What is the orientation requirement for caregivers and employees?).

§749.4417. When is a prospective kinship foster parent exempt from pre-service experience requirements?

(a) A prospective kinship foster parent caring for a child who will receive treatment services is not required to meet the pre-service requirements in §749.861(b) of this chapter (relating to What are the pre-service experience requirements for caregivers?) if the kinship foster child was living in the home on the date the prospective kinship foster home applied to your agency.

(b) If the prospective kinship foster parent does not meet the exemption criteria in subsection (a) of this section, you may limit the regimen of specific child-care experience you prescribe in accordance with §749.861(b) to observations and interactions with the kinship foster child in the prospective kinship foster parent's residence or the child's current placement.

§749.4419. When must a caregiver in a provisional kinship foster home complete pre-service training?

If you issue a provisional kinship foster home verification, a caregiver must complete pre-service training required by §749.863 of this chapter (relating to What are the pre-service training requirements for a caregiver?) as provided in this chart:
Figure: 26 TAC §749.4419

§749.4421. What are the foster home screening requirements for a provisional kinship foster home verification?

(a) If a kinship foster child was not living in the prospective kinship foster home on the date the prospective kinship foster parent applied with your agency, you must meet the home screening requirements in Subchapter M, Division 2 of this chapter (relating to Foster Home Screenings).

(b) If a kinship foster child was living in the prospective kinship foster home at the time the home applied with your agency, you must:

(1) Request a copy of the kinship home assessment from the Texas Department of Family and Protective Services (DFPS) or Single Source Continuum Contractor (SSCC) within 30 days after the date the home applied with your agency; and

(2) Meet the requirements in the following chart:
Figure: 26 TAC §749.4421(b)(2)

(c) Your child placement management staff must review and approve the home screening or home screening addendum completed in accordance with this section.

§749.4423. What information must I obtain from a Texas Department of Family and Protective Services (DFPS) kinship development worker or Single Source Continuum Contractor (SSCC) equivalent and document in a foster home screening for a provisional kinship foster home verification?

(a) If a DFPS kinship development worker or SSCC equivalent has been assigned to the home, you must contact the worker to obtain and document the following information as part of the home screening or addendum to the kinship home assessment required by §749.4421 of this division (relating to What are the foster home screening requirements for a provisional kinship foster home verification?):

(1) Any identified concerns impacting the health or safety of children and steps taken to mitigate the concerns;

(2) Kinship home assessment evaluations completed for caregivers in the home, if applicable; and

(3) Kinship developmental plans (KDP) put in place, the reason for the plan, and the outcome of the plan, if applicable.

(b) If the DFPS kinship development worker or SSCC equivalent indicates the kinship foster home is subject to a KDP, you must create a plan outlining steps you will take to address and mitigate any concerns identified in the KDP. You must document the plan in the home screening or addendum to the kinship home assessment.

(c) If your attempts to contact the DFPS kinship development worker or SSCC equivalent are unsuccessful, you must document your diligent efforts to make contact as part of home screening or addendum to the kinship home assessment, including the dates and methods by which you attempted contact.

(d) If there is no kinship development worker or SSCC equivalent assigned to the home, you must document this information in the foster home screening or foster home addendum.

§749.4425. What requirements must I meet before I issue a provisional kinship foster home verification?

(a) You may only issue a provisional kinship foster home verification to a kinship foster home that provides, or will provide, care to kinship foster children in the conservatorship of the Texas Department of Family and Protective Services (DFPS).

(b) You may only issue a provisional kinship foster home verification after:

(1) You complete the requirements in §749.2470(a)(3) - (6) of this chapter (relating to What must I do to verify a foster family home?);

(2) You complete the requirements for §749.4421 of this division (relating to What are the foster home screening requirements for a provisional kinship foster home verification?);

(3) You comply with requirements in §749.4423 of this division (relating to What information must I obtain from a Texas Department of Family and Protective Services (DFPS) kinship development worker or Single Source Continuum Contractor (SSCC) equivalent before I issue a provisional kinship foster home verification?);

(4) You document and address with the kinship foster family any indicators of potential risk to children based on:

(A) The background information you receive from the DFPS kinship development worker or SSCC equivalent as required by §749.4421 of this division and §749.4423 of this division, if applicable; and

(B) Any current screening and evaluation of information you have conducted;

(5) Your child placement management staff reviews and approves the provisional kinship verification by signing and dating it; and

(6) You issue a provisional kinship foster home verification certificate that includes:

(A) The total capacity of the kinship foster home, including the biological and adopted children of the caregivers who live in the kinship foster home, and any children for whom the family provides day care;

(B) The kinship foster home's foster care capacity, a subset of the total capacity, which includes only kinship foster children placed for foster care;

(C) The names and ages of kinship foster children for which the kinship foster home is verified to provide foster care;

(D) Types of services the kinship foster home will provide;

(E) The agency's main office or branch office that issued the verification; and

(F) The expiration date of the provisional kinship foster home verification.

(c) You can issue a provisional kinship foster home verification before the kinship foster parents complete pre-service training in accordance with §749.4419 of this division (relating to When must a caregiver in a provisional kinship foster home complete pre-service training?).

§749.4427. For what length of time may I issue a provisional kinship foster home verification?

(a) You may issue a provisional kinship foster home verification for six months from the date it is issued.

(b) You may not renew a provisional kinship foster home verification.

(c) A provisional kinship foster home verification is no longer valid when you issue a non-expiring foster home verification or close the home.

§749.4429. What must I do if a kinship foster home does not meet the requirements for a non-expiring verification before the provisional kinship foster home verification expires?

If a kinship foster home does not meet the requirements for a non-expiring foster home verification before the provisional kinship verification ends, you must:

(1) Notify the parent as soon as you become aware that the kinship foster home is not eligible for a non-expiring foster home verification and document the notification in the kinship foster home's file;

(2) Close the kinship foster home by the date the provisional kinship verification ends; and

(3) Complete a home closure summary that meets the requirements in §749.2497 of this chapter (relating to What requirements are there for a transfer or closing summary?).

§749.4431. What children may I place in a kinship foster home that has a provisional kinship foster home verification?

(a) You may only place kinship children in a kinship foster home that has a provisional kinship foster home verification.

(b) If you place additional kinship children in a home after you issue a provisional kinship foster home verification, you must:

(1) Do the following by the date you place the additional kinship foster children in the home:

(A) Determine the home is capable of providing care for the additional kinship foster child in accordance with the rules in this chapter and document your determination in the home's record;

(B) Update the kinship foster home's provisional verification certificate to be in compliance with §749.4425(b)(6) of this division (relating to What requirements must I meet before I issue a provisional kinship foster home verification?); and

(C) Notify Child Care Regulation of the change in verification, as required in §749.2489 of this chapter (relating to What information must I submit to Licensing about a foster home's verification status?); and

(2) Do the following within 30 days after the date you place the additional kinship foster child in the home:

(A) Review and update with an addendum, if necessary, the foster home screening or the addendum to the kinship home assessment you completed in accordance with §749.4421 of this division (relating to What are the foster home screening requirements for a provisional kinship foster home verification?); and

(B) Ensure the kinship foster home meets all applicable requirements in this chapter.

(c) The placement of additional kinship foster children in the home does not change the expiration date of the provisional verification.

§749.4433. May I use a home with a provisional kinship foster home verification for respite care?

You may not use a home with a provisional kinship foster home verification for respite care.

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 22, 2023.

TRD-202303090
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: October 8, 2023
For further information, please call: (512) 438-3269

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DIVISION 3. NON-EXPIRING KINSHIP FOSTER HOME VERIFICATION

26 TAC §§749.4451, 749.4453, 749.4455

STATUTORY AUTHORITY

The new rules are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code, Chapter 42.

The new rules affect Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§749.4451. Must I issue a provisional kinship foster home verification before issuing a non-expiring foster home verification?

You are not required to issue a provisional kinship foster home verification if the home meets the requirements for a non-expiring foster home verification.

§749.4453. What must I do to issue a non-expiring foster home verification to a kinship foster home with a provisional foster home verification?

Before you may issue a non-expiring foster home verification to a kinship foster home with a provisional kinship foster home verification, you must:

(1) Ensure each caregiver is in compliance with all orientation, pre-service experience, and pre-service training requirements in Subchapter F of this chapter (relating to Training and Professional Development);

(2) Meet all foster home verification requirements in §749.2470 of this chapter (relating to What must I do to verify a foster family home?); and

(3) Notify Child Care Regulation of the change in verification, as required in §749.2489 of this chapter (relating to What information must I submit to Licensing about a foster home's verification status?).

§749.4455. If I did not issue a provisional kinship foster home verification, what additional requirements must I meet before issuing a non-expiring verification to a kinship foster home?

Before you may issue a non-expiring foster home verification to a kinship foster home for which you did not issue a provisional kinship foster home verification, you must obtain and review the kinship home assessment that the Texas Department of Family and Protective Services or the Single Source Continuum Contractor completed.

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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Health and Human Services Commission
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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 23. VEHICLE INSPECTION

SUBCHAPTER C. VEHICLE INSPECTION STATION OPERATION

37 TAC §23.25

The Texas Department of Public Safety (the department) proposes an amendment to §23.25, concerning Vehicle Inspection

Fees. The proposed amendment implements Senate Bill 2102, 88th Leg., R.S. (2023), by adopting the initial three-year fee for inspection of rental passenger cars or light trucks meeting the requirements of §548.1025, Transportation Code.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of this rule will be the publication of the initial three-year fee for inspection of certain rental vehicles meeting the requirements of Texas Transportation Code, §548.1025.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require the creation of new employee positions nor eliminate current employee positions; will not require an increase or decrease in future legislative appropriations to the agency; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does not expand, limit, or repeal an existing regulation. The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability. During the first five years the proposed rule is in effect the proposed rule should not impact positively or negatively the state's economy.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Texas Department of Public Safety, P.O. Box 4087, MSC 0240, Austin, Texas 78773-0240, or by email to RSD.Rule.Comments@dps.texas.gov. Email submission only is preferred. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §548.002, which authorizes the department to adopt rules to enforce Chapter 548; and Texas Transportation Code, §548.5035, which requires the department to establish the fee by rule as proposed, S.B. 2102, 88th Leg., R.S. (2023).

Texas Government Code, §411.004(3); Texas Transportation Code, §548.002 and §548.5035, are affected by this proposal.

§23.25. Vehicle Inspection Fees.

(a) The vehicle inspection fee is a charge for performing the vehicle inspection only[,] and may not exceed the amount set by Texas Transportation Code, Chapter 548 or this chapter.

(b) The vehicle inspection station may collect the station portion of the inspection fee at the time of the original inspection whether the vehicle is passed or rejected.

(c) Charges for additional services related to the repair, replacement, or adjustment of the required items of inspection must be expressly authorized, or approved by the customer, and must be separately listed on the bill from the statutorily mandated inspection fee.

(d) A vehicle inspection station or vehicle inspector may not advertise, charge, or attempt to charge a fee in a manner that could reasonably be expected to cause confusion or misunderstanding on the part of an owner or operator presenting a vehicle regarding the relationship between the statutorily mandated inspection fee and a fee for any other service or product offered by the vehicle inspection station.

(e) The initial three-year fee for inspection of certain rental vehicles meeting the requirements of Texas Transportation Code, §548.1025 shall be $22.08.

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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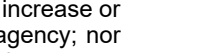

CHAPTER 35. PRIVATE SECURITY
SUBCHAPTER A. GENERAL PROVISIONS

37 TAC §§35.5, 35.9, 35.13

The Texas Department of Public Safety (the department) proposes amendments to §§35.5, 35.9, and 35.13, concerning General Provisions. The changes to §35.5, concerning Standards of Conduct, clarify that the company license holder may not use the department's name in advertisements and specify its responsibilities relating to the conduct of its employees. The changes to §35.9, concerning Advertisements, exempt publishing the licensee's address in its advertisements when that address is a residence and clarify that business cards constitute advertisements. The changes to §35.13, concerning Drug-Free Workplace Policy, clarify that a sole proprietor must have a drug-free workplace policy.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with these sections as proposed. There is no anticipated economic cost to individuals who are required to comply with these rules as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period these rules are in effect the public benefit anticipated as a result of these rules will be greater clarity and consistency in the regulation of the private security industry.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require the creation of new employee positions nor eliminate current employee positions; will not require an increase or decrease in future legislative appropriations to the agency; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does expand, limit, or repeal an existing regulation. The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability. During the first five years the proposed rule is in effect the proposed rule should not impact positively or negatively the state's economy.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Texas Department of Public Safety, P.O Box 4087, MSC 0240, Austin, Texas 78773-0240, or by email to RSD.Rule.Comments@dps.texas.gov. Email submission only is preferred. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(a), which authorizes the Public Safety Commission to adopt rules to guide the department in its administration of Texas Occupations Code, Chapter 1702.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061(a), are affected by this proposal.

§35.5. Standards of Conduct.

(a) The State Seal of Texas, a department seal or insignia, or the department's name or the name of a division within the department, may not be displayed as part of a uniform or identification card, as [~~or~~] markings on a motor vehicle, or in an advertisement or on a website, other than on such items prepared or issued by the department. The department's name may be used for the limited purpose of indicating the person or company is regulated by the department.

(b) All licensees, [~~and~~] company representatives, and employees shall cooperate fully with any investigation conducted by the department, including but not limited to the provision of employee records upon request by the department and compliance with any subpoena issued by the department. Commissioned security officers and personal protection officers shall cooperate fully with any request of the Medical Advisory Board made pursuant to Health and Safety Code, §12.095 relating to its determination of the officer's ability to exercise sound judgment with respect to the proper use and storage of a handgun. Violation of this subsection may result in the suspension of the license or commission for the duration of the noncompliance.

(c) An individual licensee issued a pocket card shall carry the pocket card on or about their person while on duty and shall present same to a peace officer or to a representative of the department upon request.

(d) A company license holder may not require a customer provide any documentation certifying that the customer has received a COVID-19 vaccination, or is in post-transmission recovery, to gain entry to the licensee's premises or to receive regulated services from the license holder.

(e) Company license holders are responsible for ensuring that employees or independent contractors who interact with customers or the general public provide personal identification, a company business card or other identification reflecting the company license holder's name, address, phone number, and license number, and DPS contact information.

(f) Company license holders are responsible for the conduct of their employees, regardless of whether the employee is licensed or unlicensed, is an independent contractor, or is performing a service for which no license is required. In particular, company license holders will be held responsible for fraud, misrepresentations or deceptive trade practices of their employees relating to sales or other customer interactions conducted on behalf of the company license holder.

§35.9. Advertisements.

(a) A licensee's advertisements must include:

(1) The company name and address as it appears in the records of the department unless the address is the license holder's residential address; and

(2) The company's license number.

(b) No licensee shall use the Texas state seal, [~~or~~] the name or insignia of the department, or the name or insignia of a division within the department to advertise or publicize a commercial undertaking, or otherwise violate Texas Business & Commerce Code, §17.08 or Texas Government Code, §411.017. The department's name may be used for the limited purpose of indicating the person or company is regulated by the department.

(c) The use of the department's name is prohibited when it may give a reasonable person the impression that the department issued the statement or that the individual is acting on behalf of the department.

(d) For purposes of this section, an advertisement includes any media created or used for the purpose of promoting the regulated business of the licensee, including business cards.

§35.13. Drug-Free Workplace Policy.

(a) In the interest of creating a safe and drug-free work environment for clients and employees, all licensed businesses [~~companies~~]

shall establish and implement a drug-free workplace policy consistent with the Texas Workforce Commission's "Drug-Free Workplace Policy."

(b) A copy of the business' [~~company's~~] drug-free workplace policy shall be signed by each employee and kept in each employee's file.

(c) For purposes of subsection (b) of this section, a sole proprietor who performs regulated services on behalf of the business is considered an employee of the business.

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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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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SUBCHAPTER D. DISCIPLINARY ACTIONS

37 TAC §35.52

The Texas Department of Public Safety (the department) proposes an amendment to §35.52, concerning Administrative Penalties. The proposed amendment updates the administrative penalty schedule in §35.52(a) by adding penalties for a violation of proposed changes to §35.5, titled Standards of Conduct, concerning the company license holder's responsibilities relating to the conduct of its employees.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of this rule will be greater clarity and consistency in the regulation of the private security industry.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require the creation of new employee positions nor eliminate current employee positions; will not require an increase or decrease in future legislative appropriations to the agency; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does not expand, limit, or repeal an existing regulation. The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability. During the first five years the proposed rule is in effect the proposed rule should not impact positively or negatively the state's economy.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Texas Department of Public Safety, P.O. Box 4087, MSC 0240, Austin, Texas 78773-0240, or by email to RSD.Rule.Comments@dps.texas.gov. Email submission only is preferred. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(a), which authorizes the Public Safety Commission to adopt rules to guide the department in its administration of Texas Occupations Code, Chapter 1702.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061(a), are affected by this proposal.

§35.52. Administrative Penalties.

(a) The administrative penalties in this section are guidelines to be used in enforcement proceedings under the Act. The fines are to be construed as maximum penalties only, and are subject to application of the factors provided in Texas Government Code, §411.524.
Figure: 37 TAC §35.52(a)
[~~Figure: 37 TAC §35.52(a)~~]

(b) The failure to pay an administrative penalty that has become final, whether by the passage of the deadline to appeal or by final court disposition, whichever is later, will result in suspension of the license with no further notice or right to appeal. The suspension will take effect upon the passage of the deadline to appeal and will remain in effect until the penalty is paid in full.

(c) A license holder whose license is revoked for an administrative violation may reapply as a new applicant after the second anniversary of the date of the revocation. An application submitted prior to the second anniversary of the date of the revocation will be denied.

(d) A violation of this Chapter or the Act by a company representative as defined in §35.1 of this title (relating to Definitions) acting on behalf of a licensed company will be construed as a violation by the company.

(e) The violation of operating with an expired license applies to operation within the one year grace period to renew. The violation of operating without a license will apply to those operating after the one year grace period

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 F. COMMISSIONED SECURITY OFFICERS

37 TAC §35.81

The Texas Department of Public Safety (the department) proposes an amendment to §35.81, concerning Application for a Security Officer Commission. The proposed amendment implements House Bill 3424, 88th Leg., R.S. (2023), which requires applicants for a commissioned security officer license to undergo a psychological test to be eligible for the license.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of this rule will be greater clarity and consistency in the regulation of the private security industry.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require the creation of new employee positions nor eliminate current employee positions; will not require an increase or decrease in future legislative appropriations to the agency; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does expand, limit, or repeal an existing regulation. The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability. During the first five years the proposed rule is in effect the proposed rule should not impact positively or negatively the state's economy.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Texas Department of Public Safety, P.O. Box 4087, MSC 0240, Austin, Texas 78773-0240, or by email to RSD.Rule.Comments@dps.texas.gov. Email submission only is preferred. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(a), which authorizes the Public Safety Commission to adopt rules to guide the department in its administration of Texas Occupations Code, Chapter 1702; and Texas Occupations Code, §1702.163, which authorizes the commission to adopt a rule requiring an applicant for a security officer commission to complete a psychological test, H.B. 3424, 88th Leg., R.S. (2023).

Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061(a) and §1702.163, are affected by this proposal.

§35.81. Application for a Security Officer Commission.

(a) A complete security officer commission application must be submitted on the most current version of the form provided by the department. The application must include:

(1) The required application fee;

(2) Fingerprints in form and manner approved by the department;

(3) The required criminal history check fee;

(4) A copy of the applicant's Level II certificate of completion;

(5) A copy of the applicant's Level III certificate of completion;

(6) Non Texas residents must provide a copy of an identification card issued by the state of the applicant's residence, or other government issued identification card; [~~and~~]

(7) Non United States citizens must submit a copy of their current alien registration card. Non-resident aliens must also submit documents establishing the right to possess firearms under federal law; and[~~.~~]

(8) Proof of completion of the Minnesota Multiphasic Personality Inventory on the department-prescribed form. The form must be signed by the administering psychologist or psychiatrist and must reflect the psychologist's or psychiatrist's interpretation of the results and the determination that the applicant is not disqualified from the license by reason of a mental health condition.

(b) Incomplete applications will not be processed and will be returned for clarification or missing information.

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 G. PERSONAL PROTECTION OFFICERS

37 TAC §35.91

The Texas Department of Public Safety (the department) proposes an amendment to §35.91, concerning Requirements for Personal Protection License. The proposed amendment ensures consistency with the change proposed to §35.81, concerning Application for a Security Officer Commission, which implements House Bill 3424, 88th Leg., R.S. (2023).

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of this rule will be greater clarity and consistency in the regulation of the private security industry.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require the creation of new employee positions nor eliminate current employee positions; will not require an increase or decrease in future legislative appropriations to the agency; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does not expand, limit, or repeal an existing regulation. The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability. During the first five years the proposed rule is in effect the proposed rule should not impact positively or negatively the state's economy.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Texas Department of Public Safety, P.O Box 4087, MSC 0240, Austin, Texas 78773-0240, or by email to RSD.Rule.Comments@dps.texas.gov. Email submission only is preferred. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(a), which authorizes the Public Safety Commission to adopt rules to guide the department in its administration of Texas Occupations Code, Chapter 1702.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061(a), are affected by this proposal.

§35.91. Requirements for Personal Protection License.

(a) An applicant for a personal protection license shall:

(1) Submit a written application for a personal protection license on a form prescribed by the department;

(2) Be at least twenty-one (21) years of age;

(3) Either possess a valid security officer commission issued prior to applying for a personal protection license, or submit an application for security officer commission in conjunction with the application for a personal protection license;

(4) Submit proof that the applicant has successfully completed the personal protection officer course taught by an approved personal protection officer instructor; and

(5) Submit proof of completion of the Minnesota Multiphasic Personality Inventory [~~test or equivalent (proof of completion of the Minnesota Multiphasic Personality Inventory test shall be~~] on the department-prescribed [~~prescribed~~] form [~~Declaration of Psychological and Emotional Health and shall be signed by a licensed psychologist~~)]. The form must be signed by the administering psychologist or psychiatrist and must reflect the psychologist's or psychiatrist's interpretation of the results and the determination that the applicant is not disqualified from the license by reason of a mental health condition.

(b) A personal protection officer may transfer their license to another employer if the personal protection officer:

(1) Has transferred their security officer commission to the new employer; and

(2) Submits the appropriate form and transfer fee to the department within fourteen (14) days of the transfer of employment to the new employer.

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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D. Phillip Adkins
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SUBCHAPTER J. SPECIAL COMPANY LICENSE QUALIFICATIONS

37 TAC §35.124

The Texas Department of Public Safety (the department) proposes new §35.124, concerning Alarm Company and Alarm Training School Licenses. The new rule specifies the experience required for alarm company and alarm training school license applicants.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of this rule will be greater clarity and consistency in the regulation of the private security industry.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require the creation of new employee positions nor eliminate current employee positions; will not require an increase or decrease in future legislative appropriations to the agency; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does not expand, limit, or repeal an existing regulation. The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability. During the first five years the proposed rule is in effect the proposed rule should not impact positively or negatively the state's economy.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Texas Department of Public Safety, P.O Box 4087, MSC 0240, Austin, Texas 78773-0240, or by email to RSD.Rule.Comments@dps.texas.gov. Email submission only is preferred. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(a), which authorizes the Public Safety Commission to adopt rules to guide the department in its administration of Texas Occupations Code, Chapter 1702.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061(a), are affected by this proposal.

§35.124. Alarm Company and Alarm Training School Licenses.

Pursuant to the Act, the department has determined an applicant for licensure as an alarm company, alarm training school, or the prospective company representative of the applicant company must have two (2) consecutive years of alarm related experience, including installation, monitoring, sales, or related supervision.

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 L. TRAINING

37 TAC §35.143

The Texas Department of Public Safety (the department) proposes amendments to §35.143, concerning Training Instructor Approval. The proposed amendments provide an additional method to qualify as a firearm training instructor and removes the minimum number of training hours required, which is outdated and inconsistent with the certifications otherwise required.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of this rule will be greater clarity and consistency in the regulation of the private security industry.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This

proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require the creation of new employee positions nor eliminate current employee positions; will not require an increase or decrease in future legislative appropriations to the agency; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does not expand, limit, or repeal an existing regulation. The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability. During the first five years the proposed rule is in effect the proposed rule should not impact positively or negatively the state's economy.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Texas Department of Public Safety, P.O. Box 4087, MSC 0240, Austin, Texas 78773-0240, or by email to RSD.Rule.Comments@dps.texas.gov. Email submission only is preferred. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(a), which authorizes the Public Safety Commission to adopt rules to guide the department in its administration of Texas Occupations Code, Chapter 1702.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061(a), are affected by this proposal.

§35.143. Training Instructor Approval.

(a) An application for approval as a training instructor shall contain evidence of qualification as required by the department. Instructors may be approved for classroom or firearm training, or both. An individual may apply for approval for one or both of these categories. To qualify for classroom or firearm instructor approval, the applicant must submit acceptable certificates of training for each category. [~~The classroom instructor and firearm certificates shall represent a combined minimum of forty (40) hours of department approved instruction.~~]

(b) The items detailed in this subsection may constitute proof of qualification as a classroom instructor for security officers:

(1) An instructor's certificate issued by Texas Commission on Law Enforcement (TCOLE);

(2) An instructor's certificate issued by federal, state, or political subdivision law enforcement agency approved by the department;

(3) An instructor's certificate issued by the Texas Education Agency (TEA);

(4) An instructor's certificate relating to law enforcement, private security, or industrial security issued by a junior college, college, or university; or

(5) A license to carry handgun instructor certificate issued by the department.

(c) The items listed in this subsection may constitute proof of qualification as a firearm training instructor, if reflecting training completed within two (2) years of the date of the application:

(1) A handgun instructor's certificate issued by the National Rifle Association;

(2) A firearm instructor's certificate issued by TCOLE; [~~or~~]

(3) A firearm instructor's certificate issued by a federal, state, or political subdivision law enforcement agency approved by the department; or[.]

(4) Documentation establishing that the applicant regularly instructs others in the use of handguns and has graduated from a handgun instructor school that uses a nationally accepted course designed to train persons as handgun instructors.

(d) Proof of qualification as an alarm systems training instructor shall include proof of completion of an approved training course on alarm installation.

(e) Proof of qualification as a personal protection officer instructor shall include, but not be limited to:

(1) A firearm instructor's certificate issued by TCOLE along with proof that the individual has instructed nonlethal self-defense or nonlethal defense of a third party for three (3) or more years. Evidence of instruction experience must include a one page detailed description of the training provided and the schedule or specific date of classes taught.

(2) An instructor's certificate issued by federal, state, or political subdivision law enforcement academy along with proof that the individual has instructed nonlethal self-defense or nonlethal defense of a third party for three (3) or more years. Evidence of instruction experience must include a one page detailed description of the training provided and the schedule or specific dates of classes taught.

(3) An instructor's certificate issued by TEA along with proof that the individual has instructed nonlethal self-defense or nonlethal defense of a third party for three (3) or more years. Evidence of instruction experience must include a one page detailed description of the training provided and the schedule or specific dates of classes taught.

(4) An instructor's certificate relating to law enforcement, private security or industrial security issued by a junior college, college or university along with proof that the individual has instructed nonlethal self-defense or nonlethal defense of a third party for three (3) or more years. Evidence of instruction experience must include a one page detailed description of the training provided and the schedule or specific dates of classes taught.

(5) Evidence of successful completion of a department approved training course for personal protection officer instructors.

(f) Notice shall be given in writing to the department within fourteen (14) days after a change in address of the approved instructor.

(g) In addition to summary actions under the Act, based on criminal history disqualifiers, the department may revoke or suspend an instructor's approval or deny the application or renewal thereof upon evidence that:

(1) The instructor or applicant has violated any provisions of the Act or this chapter;

(2) The qualifying instructor's certificate has been revoked or suspended by the issuing agency;

(3) A material false statement was made in the application; or

(4) The instructor does not meet the qualifications set forth in the provisions of the Act and this chapter.

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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D. Phillip Adkins
General Counsel
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CHAPTER 36. METALS RECYCLING ENTITIES

SUBCHAPTER A. GENERAL PROVISIONS

37 TAC §36.1

The Texas Department of Public Safety (the department) proposes an amendment to §36.1, concerning Definitions. The proposed amendment removes the definition of "fixed location" relating to the regulation of metal recycling entities because the definition conflicts with the statutory definition adopted in Senate Bill 224, 88th Leg., R.S. (2023), amending the Metals Recycling Entities Act (Occupations Code, Chapter 1956).

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of this rule will be greater clarity in regulation of the metal recycling industry and compliance with legislation.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require the creation of new employee positions nor eliminate current employee positions; will not require an increase or decrease in future legislative appropriations to the agency; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does expand, limit, or repeal an existing regulation. The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability. During the first five years the proposed rule is in effect the proposed rule should not impact positively or negatively the state's economy.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Texas Department of Public Safety, P.O. Box 4087, MSC 0240, Austin, Texas 78773-0240, or by email to RSD.Rule.Comments@dps.texas.gov. Email submission only is preferred. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1956.013, which authorizes the Public Safety Commission to adopt rules to administer Chapter 1956.

Texas Government Code, §411.004(3), and Texas Occupations Code, §1956.013, are affected by this proposal.

§36.1. Definitions.

The terms in this section have the following meanings when used in this chapter unless the context clearly indicates otherwise:

(1) Act--Texas Occupations Code, Chapter 1956.

(2) Advisory letter--An informational notification of an alleged minor violation of statute or administrative rule for which no disciplinary action is proposed.

(3) Applicant--A person who has applied for registration under the Act.

(4) Business owner--A sole proprietor, partner, member, or other individual with a financial interest in the entity.

(5) Commission--The Public Safety Commission.

(6) Controlling interest--More than 50% ownership interest in the entity.

(7) Department--The Texas Department of Public Safety.

~~[(8) Fixed location--A building or structure for which a certificate of occupancy can be issued.]~~

(8) [~~(9)~~] Immediate family member--A parent, child, sibling, or spouse.

(9) [~~(10)~~] Military service member, military veteran, and military spouse--Have the meanings provided in Texas Occupations Code, §55.001.

(10) [~~(11)~~] On-site representative--An individual responsible for the day-to-day operation of the location.

(11) [~~(12)~~] Person--A corporation, organization, agency, business trust, estate, trust, partnership, association, holder of a certificate of registration, an individual, or any other legal entity.

(12) [~~(13)~~] Personal identification document--Has the meanings provided by Texas Occupations Code, §1956.001(8) of the Act.

(13) [~~(14)~~] Program--Texas Metals Program.

(14) [~~(15)~~] Registrant--A person who holds a certificate of registration under the Act.

(15) [~~(16)~~] Revocation--The withdrawal of authority to act as a metal recycling entity under the Act.

(16) [~~(17)~~] Statutory agent--The natural person to whom any legal notice may be delivered for each location.

(17) [~~(18)~~] Suspension--A temporary cessation of the authority to act as a metal recycling entity under 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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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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37 TAC §36.5

The Texas Department of Public Safety (the department) proposes the repeal of §36.5, concerning Sellers of Catalytic Converters in the Ordinary Course of Business. The proposed repeal removes the department's clarification of the statutory exemption for businesses engaged in the sale of used catalytic converters in the ordinary course of business because the exempted entities are now expressly listed in statute pursuant to Senate Bill 224, 88th Leg., R.S. (2023), amending the Metals Recycling Entities Act (Occupations Code, Chapter 1956).

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of this rule will be greater clarity in regulation of the metal recycling industry and compliance with legislation.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require the creation of new employee positions nor eliminate current employee positions; will not require an increase or decrease in future legislative appropriations to the agency; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does expand, limit, or repeal an existing regulation. The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability. During the first five years the proposed rule is in effect the proposed rule should not impact positively or negatively the state's economy.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Texas Department of Public Safety, P.O. Box 4087, MSC 0240, Austin, Texas 78773-0240, or by email to RSD.Rule.Comments@dps.texas.gov. Email submission only is preferred. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1956.013, which authorizes the Public Safety Commission to adopt rules to administer Chapter 1956.

Texas Government Code, §411.004(3), and Texas Occupations Code, §1956.013, are affected by this proposal.

§36.5. Sellers of Catalytic Converters in the Ordinary Course of Business.

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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D. Phillip Adkins
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SUBCHAPTER B. CERTIFICATE OF REGISTRATION

37 TAC §36.11

The Texas Department of Public Safety (the department) proposes amendments to §36.11, concerning Application for Certificate of Registration. The proposed amendments are required to conform with statutory changes enacted in Senate Bill 224, 88th Leg., R.S. (2023), amending the Metals Recycling Entities Act (Occupations Code, Chapter 1956). S.B. 224 requires an applicant for a certificate of registration to provide the physical address of the fixed location at which it will conduct all or most of its regulated activity; it requires an applicant to submit a declaration describing the extent to which the applicant intends to engage in transactions involving catalytic converters removed from motor vehicles during the applicant's business activity; and it requires the updating of the declaration to reflect relevant changes to the licensee's activities. The proposed amendment also removes an unnecessary application requirement.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of this rule will be greater clarity in regulation of the metal recycling industry and compliance with legislation.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require the creation of new employee positions nor eliminate current employee positions; will not require an increase or decrease in future legislative appropriations to the agency; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does not expand, limit, or repeal an existing regulation. The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability. During the first five years the proposed rule is in effect the proposed rule should not impact positively or negatively the state's economy.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Texas Department of Public Safety, P.O. Box 4087, MSC 0240, Austin, Texas 78773-0240, or by email to RSD.Rule.Comments@dps.texas.gov. Email submission only is preferred. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1956.013, which authorizes the Public Safety Commission to adopt rules to administer Chapter 1956 and §1956.022, which authorizes the commission to adopt rules to establish qualifications for a metals recycling entity certificate of registration.

Texas Government Code, §411.004(3), and Texas Occupations Code, §1956.013 and §1956.022, are affected by this proposal.

§36.11. Application for Certificate of Registration.

(a) A certificate of registration may only be obtained through the department's online application process.

(b) The application for certificate of registration must include, but is not limited to:

(1) Criminal history disclosure of all convictions for the owner with a controlling interest in the business, or if no owner has a controlling interest in the business, for the entity's on-site representative;

(2) Proof of ownership and current status as required by the department, including but not limited to, a current Certificate of Existence or Certificate of Authority from the Texas Office of the Secretary of State and a Certificate of Good Standing from the Texas Comptroller of Public Accounts;

(3) All fees required pursuant to §36.17 of this title (relating to Fees);

~~[(4) A copy of any license or permit required by a county, municipality, or political subdivision of this state in order to act as a metal recycling entity in that county or municipality, issued to the applicant;]~~

(4) [~~(5)~~] Proof of training pursuant to §36.34 of this title (relating to Texas Metals Program Recycler Training); [~~and~~]

(5) [~~(6)~~] A statutory agent disclosure pursuant to §36.12 of this title (relating to Statutory Agent Disclosure);[~~.~~]

(6) The physical address of the fixed location at which the applicant will conduct regulated metal recycling activities; and

(7) If the applicant's business activity involves catalytic converters removed from motor vehicles, a declaration on the approved department form stating:

(A) whether the applicant will engage in a business activity that involves the conversion of catalytic converters removed from motor vehicles into raw material products by a method that in part requires the use of powered tools and equipment or the use of such raw material products in the manufacture of producer or consumer goods;

(B) whether the applicant will purchase or otherwise acquire catalytic converters removed from motor vehicles for the eventual use of the metal for purposes of the aforementioned business activities but will not actually engage in those activities; or

(C) that the applicant will deal only incidentally with catalytic converters removed from motor vehicles.

(c) Applicants proposing to conduct business at more than one (1) location must complete an application for each location and obtain a certificate of registration for each location. An applicant proposing

to conduct business at more than one (1) location is only required to comply with the requirement of subsection (b)(4) [~~subsection (b)(5)~~] of this section for the initial location at which the applicant is seeking to conduct business.

(d) A new certificate of registration for a metals recycling entity may not be issued if the applicant's immediate family member's registration as a metals recycling entity, at that same location, is currently suspended or revoked, or is subject to a pending administrative action, unless the applicant submits an affidavit stating the family member who is the subject of the suspension, revocation or pending action, has no, nor will have any, direct involvement or influence in the business of the metals recycling entity.

(e) A new certificate of registration may be issued at the same location where a previous owner's registration as a metals recycling entity is currently suspended, is subject to a pending administrative action, or was previously revoked, if the applicant submits an affidavit stating the previous owner who is the subject of the suspension, revocation, or other pending administrative action, will have no direct involvement or influence in the business of the metals recycling entity. The affidavit must contain the statement that the affiant understands and agrees that in the event the department discovers the previous registration holder is involved in the business of metals recycling entity at that location, the certificate of registration will be revoked pursuant to §36.53 of this title (relating to Revocation of a Certificate of Registration). In addition to the affidavit, when the change of ownership of the metals recycling entity is by lease of the location, the applicant seeking a certificate of registration must provide a copy of the lease agreement included with the application for certificate of registration.

(f) The failure of an applicant to meet any of the conditions of subsections (a) - (e) of this section will result in rejection of the application as incomplete.

(g) An applicant for a certificate of registration is not authorized to engage in any activity for which a certificate of registration is required prior to being issued a certificate of registration by the department.

(h) A metal recycling entity whose business activity substantially changes in the extent to which the entity engages in transactions involving catalytic converters removed from motor vehicles must update the entity's declaration at the time of or prior to the change.

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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For further information, please call: (512) 424-5848

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SUBCHAPTER E. DISCIPLINARY PROCEDURES AND ADMINISTRATIVE PROCEDURES

37 TAC §36.60

The Texas Department of Public Safety (the department) proposes amendments to §36.60, concerning Administrative Penalties. The proposed amendments remove obsolete language and modify the penalty schedule to reflect violations of the proposed amendments to rules §36.11 and §36.36, and Senate Bill 224, 88th Leg., R.S. (2023), amending the Metals Recycling Entities Act (Occupations Code, Chapter 1956).

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of this rule will be greater clarity in regulation of the metal recycling industry and compliance with legislation.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require the creation of new employee positions nor eliminate current employee positions; will not require an increase or decrease in future legislative appropriations to the agency; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does not expand, limit, or repeal an existing regulation. The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability. During the first five years the proposed rule is in effect the proposed rule should not impact positively or negatively the state's economy.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Texas Department of Public Safety, P.O. Box 4087, MSC 0240, Austin, Texas 78773-0240, or by email to RSD.Rule.Comments@dps.texas.gov. Email submission only is preferred. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1956.013, which

authorizes the Public Safety Commission to adopt rules to administer Chapter 1956.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1956.013, are affected by this proposal.

§36.60. Administrative Penalties.

~~[(a) In addition to or in lieu of discipline imposed pursuant to §36.52 of this title (relating to Advisory Letters, Reprimands and Suspensions of a Certificate of Registration) the department may impose an administrative penalty on a person who violates this Chapter or Subchapter A-2 or Subchapter A-3 of the Act, or who engages in conduct that would constitute an offense under §1956.040(c-2) or (c-4) of the Act.]~~

(a) [~~(b)~~] The figure in this section reflects the department's penalty schedule applicable to administrative penalties imposed under this section. For any violation not expressly addressed in the penalty schedule, the department may impose a penalty not to exceed $500 for the first (1st) violation. For the second (2nd) violation within the preceding one (1) year period, the penalty may not exceed $1,000.
Figure: 37 TAC §36.60(a)
[~~Figure: 37 TAC §36.60(b)~~]

(b) [~~(c)~~] Upon receipt of a notice of administrative penalty under this section, a person may request a hearing before the department pursuant to §36.56 of this title (relating to Informal Hearing; Settlement Conference).

(c) [~~(d)~~] The failure to pay an administrative penalty that has become final, whether by the passage of the deadline to appeal or by final court disposition, whichever is later, shall result in suspension of the license with no further notice or right to appeal. The suspension takes effect when the appeal deadline has passed and remains in effect until the penalty is paid in full.

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 25, 2023.

TRD-202303154
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: October 8, 2023
For further information, please call: (512) 424-5848

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PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 151. GENERAL PROVISIONS

37 TAC §151.54

The Texas Board of Criminal Justice (board) proposes new rule §151.54, Employee Training and Education - Tuition Reimbursement. The purpose of the new rule is to authorize reimbursement of training and education expenses consistent with Subchapters C and D, Chapter 656, Texas Government Code. The proposed rule has been reviewed by legal counsel and found to be within the board's authority to adopt.

Ron Steffa, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the proposed rule will be in effect, enforcing or administering the proposed rule will not have foreseeable implications related to costs or revenues for state or local government because the proposed rule will be administered using existing staffing and processes.

Mr. Steffa has also determined that for each year of the first five-year period, there will not be an economic impact on persons required to comply with the rules because the proposed rule does not require compliance by any persons. There will not be an adverse economic impact on small or micro businesses or on rural communities. Therefore, no regulatory flexibility analysis is required.

The anticipated public benefit, as a result of enforcing the proposed rule, will be to provide TDCJ employees an opportunity to qualify for reimbursement of training and education expenses. No cost will be imposed on regulated persons.

The proposed rule will have no impact on government growth; no impact on local employment; no creation or elimination of employee positions; no increase or decrease in future legislative appropriations to the TDCJ; no increase or decrease in fees paid to the TDCJ; no new regulation and no effect on an existing regulation; no increase or decrease in the number of individuals subject to the rule; and no effect upon the economy. The proposed rule will create a create a tuition reimbursement program consistent with Subchapters C and D, Chapter 656, Texas Government Code. The proposed rule will not constitute a taking.

Comments should be directed to the Office of the General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, ogccomments@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register.*

The amendments are proposed under Texas Government Code §492.013, which authorizes the board to adopt rules; and Subchapters C and D, Chapter 656, Texas Government Code, which authorize the board to adopt rules for the training and education of TDCJ administrators and employees.

Cross Reference to Statutes: None.

§151.54. Employee Training and Education - Tuition Reimbursement.

(a) Purpose. The purpose of this rule is to authorize reimbursement of training and education expenses consistent with Subchapters C and D, Chapter 656, Texas Government Code.

(b) The Texas Department of Criminal Justice (TDCJ) shall adopt policies related to training and education for agency administrators and employees consistent with this rule and Subchapters C and D, Chapter 656, Texas Government Code.

(c) The policies may establish additional eligibility criteria for administrator and employee participation in training and education supported by the TDCJ as well as an explanation of the administrators' and employees' responsibilities and potential liabilities as participants.

(d) A TDCJ administrator or employee must be employed on a full-time basis and approved by their respective division director to be eligible for training and education supported by the TDCJ.

(e) A TDCJ administrator or employee must follow all applicable TDCJ policies adopted pursuant to this rule.

(f) Only the TDCJ executive director may authorize the tuition reimbursement payment of a TDCJ administrator or employee for a training or education program offered by an institution of higher education or private or independent institution of higher education as de-

fined by Section 61.003, Education Code. The TDCJ may only reimburse the tuition expenses for a program course successfully completed by the administrator or employee at an institution of higher education accredited by a recognized accrediting agency as defined by Section 61.003, Education Code.

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 28, 2023.

TRD-202303178
Kristen Worman
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: October 8, 2023
For further information, please call: (936) 437-6700

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CHAPTER 152. CORRECTIONAL INSTITUTIONS DIVISION
SUBCHAPTER A. MISSION AND ADMISSIONS

37 TAC §152.3

The Texas Board of Criminal Justice (board) proposes amendments to §152.3, concerning Admissions. The amendments are proposed in conjunction with a proposed rule review of §152.3 as published in another section of the *Texas Register.* The proposed amendments conform the rule to legislation from the 88th legislative session, HB 2620, relating to the confinement in a county jail of a person pending transfer to the Texas Department of Criminal Justice and to compensation to a county for certain costs of confinement. The proposed amendments have been reviewed by legal counsel and found to be within the board's authority to adopt.

Ron Steffa, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the proposed amendments will be in effect, enforcing or administering the proposed amendments will not have foreseeable implications related to costs or revenues for state or local government because the proposed amendments clarify that TDCJ shall accept inmates sentenced to prison within 45 days of the date commitment papers are certified, instead of sent, throughout the rule and establish procedures for that certification.

Mr. Steffa has also determined that for each year of the first five-year period, there will not be an economic impact on persons required to comply with the rules because the proposed amendments merely clarify that TDCCJ shall accept inmates sentenced to prison within 45 days of the date commitment papers are certified, instead of sent, throughout the rule and establish procedures for that certification. There will not be an adverse economic impact on small or micro businesses or on rural communities. Therefore, no regulatory flexibility analysis is required.

The anticipated public benefit, as a result of enforcing the proposed amendments, will be to provide clarity for when TDCJ will accept inmates sentenced to prison. No cost will be imposed on regulated persons.

The proposed amendments will have no impact on government growth; no impact on local employment; no creation or elimination of a government program; no creation or elimination of employee positions; no increase or decrease in future legislative appropriations to the TDCJ; no increase or decrease in fees paid to the TDCJ; no new regulation and no effect on an existing regulation; no increase or decrease in the number of individuals subject to the rule; and no effect upon the economy. The proposed amendments will not constitute a taking.

Comments should be directed to the Office of the General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, ogccomments@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register.*

The amendments are proposed under Texas Government Code §492.013, which authorizes the board to adopt rules; § 499.071, which requires the board to adopt a scheduled admissions policy, and § 507.024, which requires the board to adopt rules to provide for the safe transfer of defendants from counties to state jail felony facilities.

Cross Reference to Statutes: None.

§152.3. Admissions.

(a) Counties will send commitment papers on inmates [~~offenders~~] sentenced to the Texas Department of Criminal Justice (TDCJ) to the TDCJ Classification and Records Office (CRO) immediately following completion of the commitment papers. Those counties equipped to do so may send paperwork electronically.

(b) The TDCJ shall accept inmates [~~offenders~~] sentenced to prison within 45 days of the date the commitment papers are certified by the CRO [~~sent~~]. [~~If sent by mail, the 45 days shall begin on the postmarked date.~~]

(c) Not later than the fifth business day after the date the CRO receives commitment papers from the county, the CRO shall:

(1) review and certify the commitment papers if the CRO determines there are no errors or deficiencies requiring corrective action by the county; or

(2) notify the county that the CRO has determined the commitment papers require corrective action by the county.

(d) [~~(c)~~]Inmates [~~Offenders~~] shall be scheduled for admission based on:

(1) their length of confinement in relation to the 45 days from the date the commitment papers are certified [~~sent~~]; and

(2) transportation routes.

(e) [~~(d)~~] Counties will inform the TDCJ State Ready Office when inmates [~~offenders~~] for whom commitment papers have been sent are transferred to another facility by bench warrants.

(f) [~~(e)~~] The TDCJ shall notify counties via electronic transmission, such as facsimile or email when applicable, of inmates [~~offenders~~] scheduled for intake, the date of intake, the respective reception unit, and transportation arrangements. Inmates [~~Offenders~~] shall be sorted by name and State Identification (SID) number, as identified by the court judgment.

(g) [~~(f)~~] Counties will notify the TDCJ admissions coordinator of any inmates [~~offenders~~] who are not available for transfer and the reason they are not available for transfer.

(h) [~~(g)~~] Counties may identify inmates [~~offenders~~] with medical or security issues that may be scheduled for intake out of sequence

on a case-by-case basis by contacting the TDCJ admissions coordinator.

(i) [~~(h)~~] After the receipt of an order by a judge for admission of an inmate [~~offender~~] to a state jail, the placement determination shall be made by the TDCJ Admissions Office. Placement shall be made in the state jail designated as serving the county in which the inmate [~~offender~~] resides unless:

(1) the inmate [~~offender~~] has no residence or was a resident of another state at the time of committing an offense;

(2) alternative placement would protect the life or safety of any person;

(3) alternative placement would increase the likelihood of the inmate's [~~offender's~~] successful completion of confinement or supervision;

(4) alternative placement is necessary to efficiently use available state jail capacity, including alternative placement because of gender; or

(5) alternative placement is necessary to provide medical or psychiatric care to the inmate [~~offender~~].

(j) [~~(i)~~] If the inmate [~~offender~~] is described by subsection (i)(1) [~~(h)(1)~~] of this rule, placement shall be made in the state jail designated as serving the county in which the offense was committed, unless a circumstance in subsection (i)(2) - (5) [~~(h)(2)~~ - ~~(5)~~] of this rule applies.

(k) [~~(j)~~] The TDCJ Admissions Office shall attempt to have placement determinations made at a regional level that may include one or more regions as designated in 37 Texas Administrative Code §152.5 (relating to Designation of State Jail Regions).

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 28, 2023.

TRD-202303177
Kristen Worman
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: October 8, 2023
For further information, please call: (936) 437-6700

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PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 403. CRIMINAL CONVICTIONS AND ELIGIBILITY FOR CERTIFICATION

37 TAC §§403.3, 403.5, 403.15

The Texas Commission on Fire Protection (commission) proposes amendments to 37 Texas Administrative Code Chapter 403, Criminal Convictions and Eligibility for Certifications, §403.3, Scope, §403.5, Access to Criminal History Record Information, and §403.15, Report of Convictions by an Individual or a Department.

BACKGROUND AND PURPOSE

The purpose of the proposed amendments to the rule is to reflect grammatical corrections and change "fire department" to a "regulated entity" which better reflects the Commission's regulatory authority.

FISCAL NOTE IMPACT ON STATE AND LOCAL GOVERNMENT

Michael Wisko, Agency Chief, has determined that for each year of the first five-year period, the proposed amendments are in effect, there will be no significant fiscal impact to state government or local governments because of enforcing or administering these amendments as proposed under Texas Government Code §2001.024(a)(4).

PUBLIC BENEFIT AND COST NOTE

Mr. Wisko has also determined under Texas Government Code §2001.024(a)(5) that for each year of the first five years the amendments are in effect the public benefit will be accurate, clear, and concise rules.

LOCAL ECONOMY IMPACT STATEMENT

There is no anticipated effect on the local economy for the first five years that the proposed amendments are in effect; therefore, no local employment impact statement is required under Texas Government Code §2001.022 and 2001.024(a)(6).

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

Mr. Wisko has determined there will be no impact on rural communities, small businesses, or micro-businesses because of implementing these amendments. Therefore, no economic impact statement or regulatory flexibility analysis, as provided by Texas Government Code §2006.002, is required.

GOVERNMENT GROWTH IMPACT STATEMENT

The agency has determined under Texas Government Code §2006.0221 that during the first five years the amendments are in effect:

(1) the rules will not create or eliminate a government program;

(2) the rules will not create or eliminate any existing employee positions;

(3) the rules will not require an increase or decrease in future legislative appropriation;

(4) the rules will not result in a decrease in fees paid to the agency;

(5) the rules will not create a new regulation;

(6) the rules will not expand a regulation;

(7) the rules will not increase the number of individuals subject to the rule; and

(8) the rules are not anticipated to have an adverse impact on the state's economy.

TAKINGS IMPACT ASSESSMENT

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

COSTS TO REGULATED PERSONS

The proposed amendments do not impose a cost on regulated persons, including another state agency, a special district, or a local government, and, therefore, are not subject to Texas Government Code §2001.0045.

ENVIRONMENTAL IMPACT STATEMENT

The commission has determined that the proposed amendments do not require an environmental impact analysis because the amendments are not major environmental rules under Texas Government Code §2001.0225.

REQUEST FOR PUBLIC COMMENT

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register,* to Michael Wisko, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768, or e-mailed to amanda.khan@tcfp.texas.gov.

STATUTORY AUTHORITY

The amended rules are proposed under Texas Government Code §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The rules are also proposed under Texas Government Code §419.032, which authorizes the commission to adopt rules establishing the requirements for certification; and §419.036, which authorizes the commission to adopt rules establishing the requirements for certification.

CROSS-REFERENCE TO STATUTE

No other statutes, articles, or codes are affected by these amendments.

§403.3. Scope.

(a) The policy and procedures established in this chapter apply to a person who holds or applies for any certificate issued under the commission's regulatory authority contained in Government Code, Chapter 419.

(b) When a person is convicted of a crime of a sexual nature, the conviction of which would require the individual to be registered as a sex offender under Chapter 62 of the Code of Criminal Procedure; or

(c) When a person is convicted of a crime that is an offense under Title 7 of the Texas Penal Code, or a similar offense under the laws of the United States of America, another state, or another [~~other~~] jurisdiction, the person's conduct directly relates to the competency and reliability of the person to assume and discharge the responsibilities of fire protection personnel. Such conduct includes, but is not limited to, intentional or knowing conduct, without a legal privilege, which [~~that~~] causes or is intended to cause a fire or explosion with the intent to injure or kill any person or animal or to destroy or damage any property. The commission may:

(1) deny a person the opportunity to be examined for a certificate;

(2) deny the application for a certificate;

(3) grant the application for a new certificate with the condition that a probated suspension be placed on the newly granted certificate;

(4) refuse to renew a certificate;

(5) suspend, revoke, or probate the suspension or revocation of an existing certificate; or

(6) limit the terms or practice of a certificate holder to areas prescribed by the commission.

(d) When a person's criminal conviction of a felony or misdemeanor directly relates to the duties and responsibilities of the holder of a certificate issued by the commission, the commission may:

(1) deny a person the opportunity to be examined for a certificate;

(2) deny the application for a certificate;

(3) grant the application for a new certificate with the condition that a probated suspension be placed on the newly granted certificate;

(4) refuse to renew a certificate;

(5) suspend, revoke, or probate the suspension or revocation of an existing certificate; or

(6) limit the terms or practice of a certificate holder to areas prescribed by the commission.

§403.5. Access to Criminal History Record Information.

(a) Criminal history record. The commission is entitled to obtain criminal history record information maintained by the Department of Public Safety, or another law enforcement agency to investigate the eligibility of a person applying to the commission for or holding a certificate.

(b) Confidentiality of information. All information received under this section is confidential and may not be released to any person outside the agency except in the following instances:

(1) a court order;

(2) with written consent of the person being investigated;

(3) in a criminal proceeding; or

(4) in a hearing conducted under the authority of the commission.

(c) Early review. A regulated entity [~~fire department~~] that employs a person regulated by the commission, a person seeking to apply for a beginning position with a regulated entity, a volunteer fire department, or an individual participating in the commission certification program may seek the early review under this chapter of the person's present fitness to be certified. Prior to completing the requirements for certification, the individual may request such a review in writing by following the required procedure. A decision by the commission based on an early review does not bind the commission if there is a change in circumstances. The following pertains to early reviews:

(1) The commission will complete its review and notify the requestor in writing concerning potential eligibility or ineligibility within 90 days following receipt of all required and necessary information for the review.

(2) A notification by the commission regarding the results of an early review is not a guarantee of certification, admission to any training program, or employment with a local government.

(3) A fee assessed by the commission for conducting an early review will be in an amount sufficient to cover the cost of conducting [~~to conduct~~] the review process, as provided in §437.19 of this title (relating to Early Review Fees).

(4) An early review request will be considered incomplete until the requestor submits all required and necessary information. Early review requests that remain incomplete for 90 days following

receipt of the initial request will expire. If the request expires and an early review is still desired, a new request and fee must be submitted.

§403.15. Report of Convictions by an Individual or a Department.

(a) A certificate holder must report to the commission, any conviction, other than a minor traffic offense (Class C misdemeanor) under the laws of this state, another state, the United States, or a foreign country, within 14 days of the conviction date.

(b) A regulated entity [~~fire~~ ~~department~~] or local government entity shall report to the commission, any conviction of a certificate holder other than a minor traffic offense (class C misdemeanor) under the laws of this state, another state, the United States, or foreign country, that it has knowledge of, within 14 days of the conviction date.

(c) A certificate holder is subject to suspension, revocation, or denial of any or all certifications for violation of the requirements of subsection (a) of this section. Each day may be considered a separate offense.

(d) A regulated entity [~~fire~~ ~~department~~] or government entity regulated by the commission violating subsection (b) of this section may be subject to administrative penalties of up to $500. Each day may be considered a separate offense.

(e) Notification may be made by mail, e-mail, or in-person [~~in person~~] to the Texas Commission on Fire Protection (TCFP) Austin office. TCFP Form #014 shall be used.

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 24, 2023.

TRD-202303142
Mike Wisko
Agency Chief
Texas Commission on Fire Protection
Earliest possible date of adoption: October 8, 2023
For further information, please call: (512) 936-3841

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CHAPTER 439. EXAMINATOINS FOR CERTIFICATION

SUBCHAPTER A. EXAMINATIONS FOR ON-SITE DELIVERY TRAINING

37 TAC §439.19

The Texas Commission on Fire Protection (commission) proposes amendments to 37 Texas Administrative Code Chapter 439, Examinations for Certifications, §439.19, Number of Test Questions.

BACKGROUND AND PURPOSE

The purpose of the proposed amendments to the rule is to reflect changes to the number of test questions, number of pilot questions, and allotted time for testing for each of the certification testing sections.

FISCAL NOTE IMPACT ON STATE AND LOCAL GOVERNMENT

Michael Wisko, Agency Chief, has determined that for each year of the first five-year period, the proposed amendments are in effect, there will be no significant fiscal impact to state government or local governments because of enforcing or administering these amendments as proposed under Texas Government Code §2001.024(a)(4).

PUBLIC BENEFIT AND COST NOTE

Mr. Wisko has also determined under Texas Government Code §2001.024(a)(5) that for each year of the first five years the amendments are in effect the public benefit will be accurate, clear, and concise rules.

LOCAL ECONOMY IMPACT STATEMENT

There is no anticipated effect on the local economy for the first five years that the proposed amendments are in effect; therefore, no local employment impact statement is required under Texas Government Code §2001.022 and 2001.024(a)(6).

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

Mr. Wisko has determined there will be no impact on rural communities, small businesses, or micro-businesses because of implementing these amendments. Therefore, no economic impact statement or regulatory flexibility analysis, as provided by Texas Government Code §2006.002, is required.

GOVERNMENT GROWTH IMPACT STATEMENT

The agency has determined under Texas Government Code §2006.0221 that during the first five years the amendments are in effect:

(1) the rules will not create or eliminate a government program;

(2) the rules will not create or eliminate any existing employee positions;

(3) the rules will not require an increase or decrease in future legislative appropriation;

(4) the rules will not result in a decrease in fees paid to the agency;

(5) the rules will not create a new regulation;

(6) the rules will not expand a regulation;

(7) the rules will not increase the number of individuals subject to the rule; and

(8) the rules are not anticipated to have an adverse impact on the state's economy.

TAKINGS IMPACT ASSESSMENT

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

COSTS TO REGULATED PERSONS

The proposed amendments do not impose a cost on regulated persons, including another state agency, a special district, or a local government, and, therefore, are not subject to Texas Government Code §2001.0045.

ENVIRONMENTAL IMPACT STATEMENT

The commission has determined that the proposed amendments do not require an environmental impact analysis because

the amendments are not major environmental rules under Texas Government Code §2001.0225.

REQUEST FOR PUBLIC COMMENT

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register,* to Michael Wisko, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768, or e-mailed to amanda.khan@tcfp.texas.gov.

STATUTORY AUTHORITY

The amended rule is proposed under Texas Government Code §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The rule is also proposed under Texas Government Code §419.032, which authorizes the commission to adopt rules establishing the requirements for certification; and §419.036, which authorizes the commission to adopt rules establishing the requirements for certification.

CROSS-REFERENCE TO STATUTE

No other statutes, articles, or codes are affected by these amendments.

§439.19. Number of Test Questions.

(a) Each examination may have two types of questions: pilot and active. Pilot questions are new questions placed on the examination for statistical purposes only. These questions do not count against an examinee if answered incorrectly. The maximum possible number of pilot questions will be 10% of the number of exam questions, rounded up.

(b) The number of questions on an examination, sectional examination, or retest will be based upon the specific examination, or number of recommended hours for a particular curriculum or section as shown in the table below. Any pilot questions added to an examination, sectional examination, or retest will be in addition to the number of exam questions.

Figure: 37 TAC §439.19(b)

[~~Figure: 37 TAC §439.19(b)~~]

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 23, 2023.

TRD-202303124
Mike Wisko
Agency Chief
Texas Commission on Fire Protection
Earliest possible date of adoption: October 8, 2023
For further information, please call: (512) 936-3841

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TITLE 43. TRANSPORTATION

PART 3. MOTOR VEHICLE CRIME PREVENTION AUTHORITY

CHAPTER 57. MOTOR VEHICLE CRIME PREVENTION AUTHORITY

43 TAC §57.48

INTRODUCTION. The Motor Vehicle Crime Prevention Authority (MVCPA) proposes amendments to 43 Texas Administrative Code (TAC) §57.48 concerning motor vehicle years of insurance calculations. These amendments are necessary to implement Senate Bill (SB) 224 enacted during the 88th Legislature, Regular Session (2023). SB 224 provides that the (a)(1) single statutory fee payable on each motor vehicle for which the insurer provides insurance coverage during the calendar year regardless of the number of policy renewals is increased from $4 to $5; and (a)(4) all motor vehicle or automobile insurance policies as defined by Insurance Code §5.01(e), covering a motor vehicle shall be assessed the $5 fee except mechanical breakdown policies, garage liability policies, non-resident policies, and policies providing only non-ownership or hired auto coverages.

EXPLANATION.

Amendments to §57.48(a)(1) and (a)(4) implement SB 224 enacted by the 88th Legislature, 2023. Transportation Code §1006.153, Fee Imposed on Insurers, provides "motor vehicle years of insurance" means the total number of years or portions of years during which a motor vehicle is covered by insurance. Insurers are required to pay to the Authority a fee equal to $5 multiplied by the total number of motor vehicle years of insurance policies delivered, issued for delivery, or renewed by the insurer. Transportation Code §1006.153(b). Insurers are required to pay the fee not later than: (1) March 1 of each year for a policy delivered, issued, or renewed from July 1 to December 31 of the previous calendar year; and (2) August 1 of each year for a policy delivered, issued, or renewed from January 1 through June 30 of that year.

Out of each fee collected under §1006.153(b), $1 shall be deposited to the credit of the general revenue fund to be used only for coordinated regulatory and law enforcement activities intended to detect and prevent catalytic converter theft in this state. The money deposited to the credit of the general revenue fund for coordinated regulatory and law enforcement activities intended to detect and prevent catalytic converter theft in this state as described by Transportation Code §1006.153(e), may be appropriated to the authority for coordinated regulatory and law enforcement activities.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Glenna Bowman, Chief Financial Officer, Texas Department of Motor Vehicles has determined that for each year of the first five years the new section will be in effect, there will be no significant fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. Joe Canady, Director of the Motor Vehicle Crime Prevention Authority (MVCPA) Division, has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Mr. Canady has also determined that, for each year of the first five years new section is in effect, the public benefits anticipated as a result of the proposal include the increased grant funding for MVCPA taskforces to increase their enforcement activities, including the prevention of catalytic converter theft.

Anticipated Costs To Comply With The Proposal. Mr. Canady anticipates that there will be costs to comply with these rules. The cost to persons required to comply with the proposal is the increased fee assessed by insurers on all motor vehicle and automobile insurance policies.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by the Government Code, §2006.002, the department has determined that the proposed amendments will not have an adverse economic effect on small businesses, micro-businesses, and rural communities because the new section does not require small businesses, micro-businesses, or rural communities to comply. Therefore, the MVCPA is not required to prepare a regulatory flexibility analysis under Government Code, §2006.002.

TAKINGS IMPACT ASSESSMENT. The MVCPA has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT. The MVCPA has determined that each year of the first five years the proposed new section is in effect, no government program would be created or eliminated. Implementation of the proposed amendments would require the creation of four new employee positions. Implementation would not require an increase in legislative appropriations to the MVCPA. The proposed amendments do not create a new regulation, or expand, limit, or repeal an existing regulation. Lastly, the proposed new section does not affect the number of individuals subject to the rule's applicability and will not affect this state's economy.

REQUEST FOR PUBLIC COMMENT.

If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on October 8, 2023. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to *rules@txdmv.gov* or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

STATUTORY AUTHORITY. The MVCPA proposes amendment to 43 TAC §57.48 under Transportation Code §1006.101.

Transportation Code §1006.101 authorizes the MVCPA to adopt rules that are necessary appropriate to implement the powers and the duties of the authority.

CROSS REFERENCE TO STATUTE. Art. 4413(37) §6.

§57.48. Motor Vehicle Years of Insurance Calculations.

(a) Each insurer, in calculating the fees established by Transportation Code §1006.153, shall comply with the following guidelines:

(1) The single statutory fee of $5 [$4] is payable on each motor vehicle for which the insurer provides insurance coverage during the calendar year regardless of the number of policy renewals; and

(2) When more than one insurer provides coverage for a motor vehicle during the calendar year, each insurer shall pay the statutory fee for that vehicle.

(3) "Motor vehicle insurance" as referred to in Transportation Code, Chapter 1006, means motor vehicle insurance as defined by the Insurance Code, Article 5.01(e). This definition shall be used when calculating the fees under this section.

(4) All motor vehicle or automobile insurance policies as defined by Insurance Code, Article 5.01(e), covering a motor vehicle shall be assessed the $5 [$4] fee except mechanical breakdown policies, garage liability policies, non-resident policies and policies providing only non-ownership or hired auto coverages.

(b) The Insurance Motor Vehicle Crime Prevention Authority Fee Report form and Instructions for the Computation of the Motor Vehicle Crime Prevention Authority Fee of the Comptroller of Public Accounts are adopted by reference. The form and instructions are available from the Comptroller of Public Accounts, Tax Administration, P.O. Box 149356, Austin, Texas 78714-9356. Each insurer shall use this form and follow those instructions when reporting assessment information to the Comptroller.

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 25, 2023.

TRD-202303157
David Richards
General Counsel
Motor Vehicle Crime Prevention Authority
Earliest possible date of adoption: October 8, 2023
For further information, please call: (512) 465-1423

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43 TAC §57.52

INTRODUCTION. The Motor Vehicle Crime Prevention Authority (MVCPA) proposes new 43 Texas Administrative Code (TAC) §57.52 concerning a penalty for late payment of fee or filing of report; appeal. This new section is necessary to implement House Bill (HB) 3514 enacted during the 87th Legislature, Regular Session (2021). HB 3514 provides that the MVCPA may assess a penalty if an insurer fails to timely pay the fee required under Transportation Code §1006.153 or fails to timely file a report of the fee. An insurer that is assessed a penalty or interest for the late filing of a fee or report may appeal the assessment to the MVCPA board under the new section.

EXPLANATION.

New §57.52 implements HB 3514 enacted by the 87th Legislature, 2021. Transportation Code §1006.153, Fee Imposed on Insurers, provides "motor vehicle years of insurance" means the total number of years or portions of years during which a motor vehicle is covered by insurance. Insurers are required to pay to the Authority a fee equal to $4 multiplied by the total number of motor vehicle years of insurance policies delivered, issued for delivery, or renewed by the insurer. Transportation Code §1006.153(b). Insurers are required to pay the fee not later than: (1) March 1 of each year for a policy delivered, issued, or renewed from July 1 to December 31 of the previous calendar year; and (2) August 1 of each year for a policy delivered, issued, or renewed from January 1 through June 30 of that year.

New §57.52 provides that a penalty shall be imposed on an insurer for the delinquent payment of the required fee or the delinquent filing of the report of a fee that is required by rule. The penalty shall be assessed in the same manner as the assessment of a penalty for a delinquent tax payment or filing or a report under Tax Code §111.061(a). Interest accrues in the manner described in Tax Code §111.060 on any fee paid after the due date required under Transportation Code §1006.153(b). HB 3514 provides the Authority with the ability to audit or contract for the audit of the fees paid under Transportation Code §1006.153(b-2) and requires the Authority to establish procedures by rule that

provide a right to an appeal to an insurer assessed a penalty or interest under this section. The final decision regarding an insurer's appeal is decided by a majority vote of the Authority. The appeal of the assessment of a penalty or interest is not a contested case under Government Code, Chapter 2001.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Glenna Bowman, Chief Financial Officer, Texas Department of Motor Vehicles has determined that for each year of the first five years the new section will be in effect, there will be no significant fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. Joe Canady, Director of the Motor Vehicle Crime Prevention Authority (MVCPA) Division, has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Mr. Canady has also determined that, for each year of the first five years new section is in effect, the public benefits anticipated as a result of the proposal include the timely payment of the MVCPA fee and timely filing of the report of the MVCPA fee by insurers.

Anticipated Costs To Comply With The Proposal. Mr. Canady anticipates that there will be costs to comply with these rules. The cost to persons required to comply with the proposal are the payment of a penalty and any interest accrued on that penalty for the delinquent payment of the fee or delinquent filing of the report of the fee.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by the Government Code, §2006.002, the department has determined that the proposed new section will not have an adverse economic effect on small businesses, micro-businesses, and rural communities because the new section does not require small businesses, micro-businesses, or rural communities to comply. Therefore, the MVCPA is not required to prepare a regulatory flexibility analysis under Government Code, §2006.002.

TAKINGS IMPACT ASSESSMENT. The MVCPA has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT. The MVCPA has determined that each year of the first five years the proposed new section is in effect, no government program would be created or eliminated. Implementation of the proposed new section would not require the creation of new employee positions or elimination of existing employee positions. Implementation would not require an increase or decrease in future legislative appropriations to the MVCPA or an increase or decrease of fees paid to the MVCPA. The proposed new section does not create a new regulation, or expand, limit, or repeal an existing regulation. Lastly, the proposed new section does not affect the number of individuals subject to the rule's applicability and will not affect this state's economy.

REQUEST FOR PUBLIC COMMENT.

If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on October 8, 2023. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to *rules@txdmv.gov* or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

STATUTORY AUTHORITY. The MVCPA proposes new section 43 TAC §57.52 under Transportation Code §1006.101.

Transportation Code §1006.101 authorizes the MVCPA may adopt rules to administer Chapter 1006.

CROSS REFERENCE TO STATUTE. Art. 4413(37) §6.

§57.52. Assessment of Penalty or Interest for Late Payment of the Fee, Filing of Report; Appeal.

(a) Penalty for Late Payment of Fee or Filing of Report.

(1) A penalty shall be assessed against an insurer for the delinquent payment of the fee required under Transportation Code §1006.153(b-1) or the delinquent filing of any report of the fee required.

(2) The penalty for the delinquent payment of the fee or late filing of the report shall be assessed in accordance with Tax Code §111.061(a).

(3) Interest accrues in the manner described in Tax Code §111.060 on any fee paid after the due date.

(b) Appeal Procedures.

(1) An insurer that is assessed a penalty or interest by the MVCPA under Transportation Code §1006.153 may appeal the assessment by submitting an MVCPA prescribed form to the MVCPA Director within thirty (30) days of the date of the assessment.

(2) An insurer shall provide the MVCPA with any written documentation or evidence demonstrating the reasons for the late payment of the fee or late filing of the report.

(3) The MVCPA shall make a final decision on an insurer's appeal at a regularly scheduled open meeting of the MVCPA board. A final decision on the appeal shall be made by a majority vote of the MVCPA board.

(4) An appeal under this section is not a contested case under Government Code, Chapter 2001.

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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Motor Vehicle Crime Prevention Authority
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